

CRITICAL PHILOSOPHICAL ANARCHISM

A Defence of An Anarchist Approach to the Problem of Political Authority.

Submission for the degree of Doctorate of Philosophy

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2004

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For my beloved parents

For Christo

ABSTRACT

In this thesis I define and defend the philosophy of critical philosophical anarchism and show it to be superior to alternative (anarchist and non-anarchist) approaches to the problem of justification of political institutions. In general I argue that the anarchist position within the contemporary debate on political obligation has been dismissed too easily and that the value of an anarchist approach to an understanding of (and solution to) the problem of political authority is underestimated in current thought.

In particular, my thesis sets out and defends the critical philosophical anarchist approach to the problem of political obligation and contrasts this approach with traditional treatments of the problem. I advance a clearer statement of the critical philosophical anarchist position than those currently available and demonstrate the continued value of taking an anarchist approach to the problem of political authority.

This thesis has seven chapters. In the introductory chapter I set out the basic problem of political obligation and the anarchist position I want to defend. The first chapter presents the main aspects of the central problem and the main argument for its solution to be developed in the following chapters. Chapter two provides an analysis and restatement of anarchist arguments against consent and contract theories of political obligation. Chapter three offers considerations against a natural duty theory of political obligation. Chapter four addresses a reciprocity-based theory of political obligation, to wit: the principle of fairness as formulated by Hart and Rawls. The fifth chapter provides a general illustration of the distinctive contribution of critical philosophical anarchism to the problem of political authority. It develops the argument set out in chapter one and references to that argument in the preceding critical chapters on alternative approaches to the problem of political obligation. In the concluding chapter I tie together my argument for critical philosophical anarchism, as developed over the course of the thesis, and set out the main aims of an anarchist approach to society in light of this discussion.

ACKNOWLEDGEMENTS

This thesis is the result of a series of arguments and discussions about the issue of political obligation. I am indebted to those who inspired my thinking and helped me to formulate the ideas presented. They are too many to mention.

I would particularly like to thank my supervisor Dr Véronique Munoz-Dardé for her continual advice, encouragement and devotion. I would also like to thank my secondary supervisor Professor Jonathan Wolff for many inspiring conversations and for his final advice on my work. Furthermore, I would like to thank my fellow students for their valuable comments and their distinctive impression on my student life. Among them: James Wilson, Ian Hulse, Isabella Muzio and Alex Voorhoeve. Special thanks to Raj Sehgal, for his insightful criticism and recommendations; and to Saladin Meckled-Garcia for providing a permanent inspiration for my work.

I am grateful to my parents for their endless love and support.

I would like to thank professor Vasos Karageorgis, my mentor, for his constant support and influence on me; and Meropi Tsimili who has been a mother, a teacher and a real friend to me.

Also, I would like to thank my dear friend Christos Yiannitsa, who helped me be disciplined at times of hard work. Special thanks to my friend and flatmate Marius for keeping me sane when I drove him to the edge and for his indispensable help with navigating the computer mystery; my cousin George for his humour and insight at difficult times; my friends Melina and Stella for making it all much easier and enjoyable; my childhood friend Rena for her impact on my intellectual growth and my life in general; and Alexander for his continued encouragement and belief in me.

All my love and thanks to my beloved Kosta, who gave me the strength to make things that matter to me come true.

Finally, I would like to thank especially the Arts and Humanities Research Board for financing my studies and thus making the completion of this work possible.

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Introduction.

According to Anarchism the coercion of individuals is immoral. The coercion of one individual by another is wrong, as is the coercion of the individual by a collective such as the State. For anarchists the value of freedom is paramount. A strand of anarchism expresses these positions within the philosophical debate on political obligation. And this has distinctive impact on our approach to political institutions. This is my thesis.

The unifying premise of anarchism is opposition to political authority.¹ Opposition to the state's *right to rule* is common to all forms of anarchism and its proponents, despite the variety and division among them. The rejection of the state's right to rule relates to the stronger anarchist challenge to its *right to exist*. The upshot of political anarchism is that the state must be *resisted* as an *evil* and a new social form must emerge which succeeds the state and constitutes an improvement on societies organised around the state. Thus, in order to pave the way for a complete evaluation of anarchism, it is helpful to examine first the philosophical anarchist rejection of political authority, and to detail the positive views, if any, that it expresses. My strategy throughout this study will be to examine this challenge as formulated within the debate on political obligation.

In this chapter, I begin with some general considerations on the problem of political obligation. Then, I briefly describe the four basic forms of anarchism by way of preface in order to clarify the theoretical perspective of

¹The traditional expression of the anarchist challenge is its opposition to the authority of *the state*, which focuses on the state's special characteristics as 'a specific form of government', namely its being a '*sovereign*', '*compulsory*', '*monopolistic*' and '*distinct body*' (see Miller 1984, p.5). But anarchism's opposition to the state reflects its more general opposition to political authority and the institutionalised coercion which characterises it (for these, see *ibid.* and my characterisation of the 'political' below), although not necessarily to a looser sense of political society as a form of social organisation. So, in its core, anarchism objects to the authority of all political institutions which involve institutionalised coercion. In the rest of this thesis I will use the term 'state' interchangeably with 'political institutions' (or, 'political constraints') and 'institutionalised coercion' to designate the object of the anarchist opposition to political authority.

critical philosophical anarchism that I defend. Finally I discuss a number of underlying ideas which help us assess the general contribution of philosophical anarchism to the problem of political authority.

1.The problem of political obligation.

i.The correlativity thesis.

The problem of the existence and justification of political obligation is usually taken to be identical to the problem of justification of political authority. Justification of political authority involves establishment of the state's (claim to the) right to rule. This right is taken to be the logical correlate partly of an obligation to obey (i.e., of political obligation).² Alternatively, correlativity can be conceived as a normative doctrine, according to which political obligation is understood as either a normative condition or a normative consequence of political authority (depending on the perspective one adopts), although not identical to it.³ Theorists divide as to whether to accept correlativity in any of the above senses.⁴ To the extent that political authority is understood as a complex right to exclusively and coercively make regulations, impose duties and demand compliance (i.e., command and be obeyed), then it is properly taken as correlative to a complex set of

²The 'doctrine of "logical correlativity": Simmons 1979, pp.58 and 195-197; 1996, pp.21 and 36, note 11.

³This means that either authority or obligation is already independently justified and becomes the ground of the other; and that it reflects 'a substantive [...] thesis about the state, namely that it is properly the instrument of its citizens' aims' (Green 1988, p.236).

⁴Defenders of political obligation and philosophical anarchists usually adopt correlativity (for example: Anscombe 1978; Horton 1992; Simmons 1979; 1996; 1999; Raz 1979b; 1985; 1990; Green 1988). This perspective might be explained to a significant extent by the fact that these theorists conceive political authority, or, the right to rule, as something more than mere permission to coerce. For example: 'What we really have in mind is a right to make laws and regulations, to judge and to punish for failing to conform to certain standards, or to order some redress for the victims of such violations, as well as a right to command' (Raz 1990, p.2); and, 'Political authority has coercive powers, but its authority extends beyond its use of those powers. It appeals to people's recognition of their moral and civic duties, while being ready, in many or even most cases, to use coercion if the appeal fails' (ibid. p.15); also, 'Authority on the part of those who give orders and make regulations is: a right to be obeyed. We may say, more amply: authority is a regular right to be obeyed in a domain of decision' (Anscombe 1978, p.144). Characteristically, defenders of non-correlativity conceive authority as mere liability or permission to coerce, which is justifiably distinct from, and does not necessarily entail, a duty to obey, that is, political obligation (see, Raphael 1976; Ladenson 1980; Wellman 1996). For a useful discussion of objections to logical and to normative correlativity, see Green 1988, pp.234-240.

obligations among which is the (perhaps most) important obligation to comply (i.e., political obligation).⁵ Such a correlativity is adopted in this thesis as one central sense of legitimacy and it can make sense either in its logical or in its normative form. But, it is enough to focus on normative correlativity, which involves substantive considerations about the nature of political authority and our relation to it, in order to remember that it is in the nature of the state's claim-right to rule to generate obligations attached to it.

ii. The two main aspects of the problem of political obligation.

Thus the problem of political obligation is primarily the problem of finding a special justification⁶ of the various obligations imposed on citizens by their political institutions, which are correlative to a complex right of those institutions to rule those citizens.⁷ Political obligation has traditionally been regarded as that notion through which we must understand a *special relationship* between individuals and the political institutions of their country of

⁵This description is closer to the Lockean account of the right to rule. But it is meant to capture the elements of conceptions such as those presented in note 4 above to be given by defenders of correlativity.

⁶Horton seems right that this problem involves in fact a range of questions and that, in addition to the question of justification, the questions of the author and of the scope of political obligations are also central (1992, pp.12-13). But this thesis concentrates on the question of justification, which, as Horton correctly points out, is presupposed by the other two and in general 'has been taken to be the kernel of the philosophical problem of political obligation' (ibid.). It is with regard to this question that I evaluate the anarchist position. Moreover, the traditional philosophical discussion of political authority is discussion of attempts to account for *de jure* political authority, that is, authority which *has* the right to rule, rather than of *de facto* political authority, namely one which *claims* to have this right and has this claim *acknowledged* by its subjects (for this distinction see, e.g., Wolff 1970, p.2; Simmons 1979, pp.41-42, 196 and 206; 1999, pp.746-751; Raz 1990, p.3). In relation to these points, see the discussion of the moral feature of the nature of the problem of political obligation below.

⁷In this form, it has been also identified as the problem of 'state legitimacy', morally understood (Simmons 1999; for my focus on normative conceptions, see note 6 above). And in this thesis I use state legitimacy interchangeably with state authority and political obligation. But this use of legitimacy should not be confused with other, proper yet different, uses of the notion. For example, within contemporary contractualism the focus is on deciding the *content* of legitimacy (or of justice), on examining what demands political institutions should satisfy in order to be legitimate (or, otherwise: on formulating legitimate principles for institutions), a question different from an explicit defence of their right to exist and their right to rule (e.g., Rawls 1971; Scanlon 1982). Simmons sees the contractualist approach as a special conception of 'justification' of the state and opposes its being drawn together with the question of state legitimacy which corresponds to the problem of political obligation, namely of legitimacy as the right to rule (1999, 758-769). He himself conceives the *justification of the state* as the question concerning *which institutions, if any, have the right to exist and takes it to be separate from the question of state legitimacy as one about justification of the right to rule* (ibid. pp.739-751). For other senses of legitimacy, see Simmons 1979, pp.40-41 and 197. For non-normative accounts of political legitimacy, see Weber 1947; Barker 1990.

residence. Below I present the two main features of the nature of the problem of political obligation:

(a) *The state, the law and political institutions in general have a special character and status.* This is described by four theses.⁸ *The sources thesis:* political institutions take their own validity from within the political/legal structure, from legally defined criteria and standards. *The particularity thesis:* citizens are taken to have a special relationship with their own government as it itself determines its conditions of membership within its territory. This means that political institutions have a particular constituency to which they apply and any justification of political obligation should provide a basis for obeying particularly one's own government with its own criteria for membership.⁹ *The coercion thesis:* institutional requirements can be backed by coercion. The state is sovereign and monopolistic in the sense that it determines the rights and duties of its citizens in an authoritarian and exclusionary way. In respect of this function, legal sanction, or coercion, is its primary means. *The independence premise:* an account of political obligation should include criteria which show the independent nature of the 'political' (as this nature is reflected in the elements of the three previous theses), and it is by appeal to this essentially political nature of institutions that political obligation should be justified. That is, the special commitment which such an obligation is supposed to express needs to be shown to be necessarily connected to its *political nature*. I will be referring to these four premises as 'the theses on the political'.

(b) *The commands of political authorities are directed at the actions of individuals in the public domain.* This means that such commands have a direct effect on the beliefs of individuals but also on their actions (such commands guide their practical reasoning and behaviour). In this way they are reasons for action (normative requirements) in the same way as moral or prudential reasons. More importantly, for those who accept and discuss the problem of political obligation, political obligations are understood to be *moral* in character.¹⁰ They are the defining terms of a special moral relationship between

⁸For these theses, see Meckled-Garcia 1998, pp.14-18.

⁹'The particularity requirement': Simmons 1979, pp.31-35; Green 1988, pp.227-228.

¹⁰See, e.g., Horton 1992, pp.13-15; Raz 1979b, p.244.

citizens and their polity. Yet, the most convincing reason for requiring a moral ground is that it provides the most appropriate way of *filtering* political requirements in order to decide which of them can properly be attributed the status of obligations. That is, it works as a criterion for distinguishing unacceptable requirements from those which can be accepted as valid laws. When, for example, individuals are presented with laws against bodily harm and laws discriminating against a specific group of people (such as women), they need to be able to assert the acceptability of the former and exclude the latter by reference to a stable testing ground. Such filtering is necessary and valuable since institutions affect considerably our freedom and our lives more generally, because it demands that they need to be sufficiently motivated in their doing so. That is, it demands that there are convincing reasons in favour of their interference. A moral ground provides the strongest basis for normative requirements and creates a distance from our institutions, beneficial to a critical assessment of their function and quality. These points express the second important aspect of the issue of political obligation as traditionally understood: a justification of political obligation must involve the provision of *moral grounds* for supporting political institutions, if it is to be acceptable.

Together (a) and (b) say that an adequate justification of political obligation involves the *recognition of the legitimacy of political authority qua political, on the basis of moral reasons*.¹¹

¹¹Following philosophical anarchists, I see as inevitable the need to defend the existence of special obligations of the political domain on *moral* principles and arguments for them. This is so mainly because of the direct and dominant role that political institutions, with their requirements and present practices, play in our social lives and because they claim the right to do so. The demands of political institutions affect primarily individual self-determination and this raises a constant requirement to put limits on them and conditions on how they do so, rooted in individual life and morality. As the anarchist reminds us, coercion can never be desirable in itself, without proper motivation for it. It is always a defect and needs to be counterbalanced by merits sufficiently strong to qualify the agencies which incorporate it. The very fact that obligations are requirements and that it is characteristic of the latter that they involve a 'pressure to perform', makes explicit the tie between obligation and coercion and thus pressing a demand for a proper justification (Simmons 1979, p.7). These points relate to the other central feature in the traditional understanding of the debate on political obligation: the appeal to a moral reason as a ground of the political *qua political*. To appeal occasionally (or even frequently) to moral reasons as justifications of compliance with particular laws does not constitute a *moral recognition of the authority of the law*. (For the meaning of such a recognition, in comparison with other kinds of reliance on moral reasons, see Miller 1984, pp.16-18 and Raz's view discussed below).

iii. Quality-based and interaction-based evaluations of political institutions.

Two central elements of evaluation of states which are found in discussions of political obligation are: *quality* and *specific interaction*. The former involves general positive qualities or accomplishments of institutions (such as justice and the supply of important goods), and it is commonplace in moral arguments for their existence. The latter refers to ‘morally significant features of the specific histories of interaction between individual persons and their polities’ (components such as actually giving one’s consent).¹² Judgements about the *nature* of political institutions, the qualities which might make them morally acceptable, provide a basic condition that institutions must satisfy and in this respect affect judgements about political obligation.¹³ Some of the theories of political obligation employ them more centrally, as grounds of that question. But the general moral relationship based on the nature of a state overall differs from the particular moral relationship which is the focus of the problem of political obligation.¹⁴ These are some preliminary points which will play an important role for the main argument of this thesis and will be further clarified in the course of the development of it.¹⁵

¹²Simmons 1999, p.764. These elements ground Simmons’ distinction between ‘*generic*’ and ‘*transactional* evaluations’ (ibid.). In this thesis I also apply, in relation to the first kind of evaluation, the term ‘institutional morality’, which is drawn from an analogous distinction between ‘theories of institutional morality’ and ‘theories of emergence’ (Meckled-Garcia 1998, chapter 2). Schmitz makes a distinction similar to Simmons’, between ‘teleological’ and ‘emergent’ justifications (1996). But his account is less satisfactory.

¹³Quality is the factor that Simmons ties to the question of justification as he understands it (see note 7 above), which is considered to precede arguments for political obligation (1999). The basic idea here is that we cannot morally bind ourselves to immoral institutions.

¹⁴It will be part of the argument of this thesis to see whether the one can ground the other and, in general, to assess the role of institutional qualities in justifying political obligation. This thesis follows a classical perspective in seeing the problem of political obligation as about grounding a special bond between individual and government through understanding ‘the *relationship* or *transaction* which could create’ such a bond (Simmons 1979, p.4, emphasis mine). Also, this thesis stresses the fact that political obligation is a special bond between a *particular* government and each *particular* citizen. Having such a particularised character, it seems more likely to be created by very specific relationships, which are characterised by actual and particular features of direct transaction and which it is doubtful that can be captured by more generally described connections between states and subjects (in relation to these points, see on the ‘particularity requirement’: ibid. pp.31-35 and the discussion of the political above). In the light of these points, political obligation seems more relevant to the category of transactional evaluation, which Simmons considers to be the proper for assessing the question of political obligation (1999). The arguments of the following chapters will help decide the force of these considerations.

¹⁵Whether or not justification and legitimacy are separate dimensions of evaluation of institutions and whether or not justification in terms of institutional qualities (or: of generic evaluation) is directed primarily to the existence of the state, anarchism challenges political institutions with regard to both existence and obligation. This thesis concentrates on its

iv. The conditions of political obligation.

The four theses which define the political and the demand for a moral ground are accompanied by certain formal conditions which have traditionally been used to determine theories of political obligation and which are pressed by anarchists. In the next few pages I will clarify which of these conditions remain operative and introduce their role within the debate on political obligation.

The particularity thesis, which defines a central part of the nature of the political, provides itself a first condition on how to attempt to assign moral weight to the bond of political obligation, namely that we show the moral significance of citizens being bound to *their own* states. Being coherently in the nature of political institutions to address their requirements to a specific constituency, *particularity* is a natural and inevitable condition within the debate. Two other general assumptions of a justification of political obligation involve the demand of 'universality', namely that moral justification applies to all subjects with regard to all laws; and the demand of 'singularity in ground', namely that all obligations are based on one and the same moral reason.¹⁶ Both these assumptions have been questioned.¹⁷ The first because of the possibility and appropriateness of excluding some people from having political obligations. The second because of the possibility and appropriateness of appealing to more than one reason to explain different individuals' obligation to obey the same law and to explain the same individual's obligation to different laws. Many theorists are content with seeing reasons for political obligation as *prima facie* reasons; with appealing to a plurality of grounds; and with establishing political obligation for many of the citizens but not for all.¹⁸ Even philosophical anarchists such as Simmons recognise that universality and

position with regard to the particular relationship of political obligation. But one of my main objectives is to show how the anarchist perspective makes the problem of political obligation central for a broader evaluation of political institutions, thus ultimately a challenge to their very existence. The fundamental question which motivates anarchism is: if and why we should have institutions at all. In the debate on political obligation this question is vindicated in a challenge to the very possibility of obligations. These issues are central for the distinctive contribution of philosophical anarchism to the debate on political obligation which I attempt to demonstrate.

¹⁶Wolff 1995b, p.10.

¹⁷For this see Simmons 1979, pp.35-37. Particularly for arguments against 'universality', see Green 1988, pp.240-247.

¹⁸Wolff 1995b; Gans 1992.

singularity are not necessarily features of political obligation.¹⁹ Thus, I do not adopt these two conditions as appropriate constraints on accounts of political obligation.

Nevertheless, what should be drawn from the above considerations is the recognition that, in order to justify political obligation, a sufficient amount of *generality* is necessary.²⁰ Klosko (1987) and other defenders of the state recognise this, and it is in fact this aspect that has created the most difficulties for them. As I will argue, all accounts of political obligation proposed so far fail to justify political obligation for *most* of the people. Thus, the justification of a general political obligation has not yet been given.

The other two conditions which work as proper formal constraints on accounts of political obligation become very explicit in a last factor of the problem of political obligation to which I want to draw attention, namely our understanding of the character of the notion of political obligation. A good example is Raz's proposal. Political obligation 'is a general obligation applying to ... all the laws on all occasions to which they apply'.²¹ It is not an 'incidental reason'.²² It is a reason to obey the law *because it is the law*, that is, 'to obey the law *as it requires to be obeyed*'.²³ It involves the acceptance

¹⁹Simmons 1979, pp.35-37. And yet Simmons and other anarchists have been criticised for posing 'particularly rigorous and demanding standards of moral justification' of the state (Horton 1992, p.134).

²⁰This, not because of the worry claimed to generate the demand of universal application of political obligation (namely, that without political obligations certain people will become a threat to the rest of those obeying; for an expression of this worry see Wolff 1995b, p.97). Beyond such a worry, I insist on 'generality' and on the other three conditions of political obligation offered by philosophical anarchists (namely, 'particularity' as reflected in the particularity thesis above, 'bindingness' and 'content-independence': see next note and the paragraph to which it refers) because they provide an appropriate (and perhaps the most suitable) way of ascribing to the traditional understanding of the problem of political obligation the significance that, I argue in this project, it has (see note 11). Also, generality corresponds to the centralised and monopolistic character of political institutions. And it captures a central characteristic in the anarchist approach to accounts of political obligation, namely that we be interested 'in describing all moral requirements which bind citizens to their political communities' (Simmons 1979, p.37. For his support of generality, see *ibid.* pp.55-56).

²¹Raz 1979b, p.234.

²²*Ibid.*

²³*Ibid.* p.236. I agree with Simmons that political obligation is not only obligation to obey the law but involves much more, such as the duties of citizenship, which involve supporting political institutions in other ways, for example, by participating in the defence of one's country (1979, p.5). This point is suggested also by the analysis of correlativity at the beginning of this chapter. Yet, in the present paragraph I use Raz's discussion to make a different point about the character of political obligation and I adopt his terminology only as part of that discussion.

of the directives of the law, not only with regard to their content but also as far as the conditions or criteria by which they may be overridden are concerned. The law is not absolute, but the considerations under which it is defeated should be recognised by the law itself; such considerations might be strong moral reasons which override the obligation to obey the law, but one's acting according to them irrespectively of any recognition of their application by the law itself constitutes a violation of the law. Thus, although the application of the law does not imply that reasons other than those recognised by the law are less important, the law is 'exclusionary'; and 'its rules and rulings are authoritative'.²⁴ It is in the very nature of the law and it is its point that it functions as a conclusion of practical reason, already excluding certain considerations; this is what the law is. Only by understanding that political obligation is the obligation to obey the law because it is the law can we avoid losing sight of the demand that any suggested justification should be a ground for exactly this kind of requirement. Given this understanding of political obligation it is possible to recognise that what anarchists deny is a *general obligation to obey political institutions as they require to be obeyed*.²⁵

Thus, theories of political obligation, which attempt to justify morally a specially political kind of requirement, are constrained by four formal conditions as clarified above: namely, *particularity*, *generality*, *bindingness* and *content-independence*. I call them 'the conditions of political obligation'. These conditions appear as merely formal requirements which a theorist of political obligation might find reasons to dispense with, against the anarchist standpoint. But one task of this thesis is to make explicit how their role is indispensable in the debate on political obligation and how these conditions characterise the anarchist perspective, which ultimately helps decide the anarchist contribution within this debate. The input of the above discussion is that it makes obvious that these conditions provide already defining features of the political nature of

²⁴Raz 1979b, pp.236-237.

²⁵These considerations are represented in the following chapters by the terms 'content-independence' and 'bindingness', which designate the last two conditions of political obligation (Green 1988, p.225-226). The recognition of these features as characteristic of political obligation is not incompatible with the claim that political obligations are not 'all things considered' reasons for action (Simmons 1979, pp.7-11). They are also reflected in the special nature of the 'political' as defined in the four theses presented above. Similar considerations about the character of political obligation are echoed in Friedman's analysis of the notion of authority (Friedman 1973).

such obligations, which is a central aspect of the debate.²⁶ This thesis is aimed at confirming that they are justifiably offered as determinants of the link required between this aspect and the second one, that of moral justification.

In sum, the problem of political obligation concerns fundamentally an *ethical* relationship between people and the political community of which they are members, that is, one involving *moral grounds* for a special relationship to our polities, which are strong but neither absolute nor exhaustive. Also, this issue is *political* in the sense that membership of a polity is characterised by the special features of the political as defined by the theses on the political and reflected in the conditions of political obligation. The arguments to be examined in the main part of the thesis are approached on the basis of an acceptance of the debate over political obligation in these terms.²⁷

2.The variety of Anarchisms. Defining Critical Philosophical Anarchism.

At this point, I turn to the discussion of *different forms of anarchism*. There are two main sides of anarchism: political and philosophical. The first is further divided into individualist and communal anarchism and the second into positive (a priori) and negative (a posteriori) anarchism. We thus have four main forms of anarchism. The discussion below consists in a brief description of each form in order to arrive at a basic account of the anarchist position that I discuss throughout this thesis.

Political Anarchism is primarily devoted to the task of demolishing the state. It sees this task as an immediate implication of rejecting political authority. But it also views the state as a very bad form of social organisation, a reason for opposition which is, for this form of anarchism, additional to its belief that the state's existence and authority remain unjustified. Correspondingly, this critique of the state is premised on a vision

²⁶Another way of rejecting universality and singularity of ground as conditions of political obligation is observing that none of the two has a direct and relevant connection with the features that make the requirements of political institutions political. That is, none of them is necessary for the authoritative, monopolistic and coercive character of political institutions.

²⁷See also notes 11 and 20 above.

of social life without political institutions. Philosophical Anarchism, on the other hand, concentrates on the critique of political authority and does not necessarily require the abolition of the state. This latter characteristic is reflected in the fact that negative philosophical anarchism is compatible with 'a wide range of alternative political outlooks'²⁸ as will become clear below. Many anarchists are both philosophical and political, but a philosophical anarchist may remain non-political.

Political Individualist Anarchism is marked by the way in which it points out a central aspect of anarchism: the commitment to individual autonomy, or freedom,²⁹ as a primary value. It promotes the idea that each individual has an 'inviolable sphere of action' with absolute sovereignty.³⁰ It views social relationships as contractual interactions among independent beings, able to lead their lives abstracted from their social environment and its impacts.³¹ This leads individualist anarchists to indicate the importance of voluntariness in any relation to and interaction with others and to attack political obligation on the grounds that states are not based on voluntary relations. They thus see them as coercive, exploitative and evil.³²

Political Communal Anarchism has roots in socialism but it nonetheless differs from other socialist ideologies, especially in the latter's devotion to politically centralised forms of organisation and control (if not always as ends, at least as means towards an ideal society).³³ Communal anarchism points out 'the social character of human life': the value of community, mutuality, free co-operation and, in the general case, social arrangements of a reciprocal

²⁸Horton 1992, p.132.

²⁹In the sense that each individual has a capacity and right to be 'self-legislating' (Wolff 1970, p.14), to make and act on his/her own decisions - as long as these do 'not violate the similar rights of others' (Horton 1992, p.115) and 'avoid causing dramatic social harm' (Simmons 1993, p.267). At a basic level freedom can be conceived as ability to make choices on various issues of one's life under circumstances of lack of coercion of any kind, adequate knowledge and unimpaired capacity for rational deliberation. All anarchists construe freedom in striking opposition to coercion. In individualist anarchism absence of coercion is seen primarily as lack of interference with a private sphere of individual life. More generally, anarchism is committed to the ideal of self-determination understood best as self-development under conditions of proper social relationships, where subordination of some to others is replaced by mutual respect, equal active participation and common flourishing. Here absence of coercion becomes a matter of denials of submission which engage with aspects more comprehensive than the negative demands of individualist anarchism.

³⁰Miller 1984, p.30.

³¹'Self-made' and 'self-sufficient', see Horton 1992, pp.116-117.

³²Ibid.

³³See, for example, the split between Marx and Bakunin (Joll 1964, chapter IV).

character.³⁴ Its proponents have devoted themselves to developing visions of society which involve a series of co-operative enterprises in every aspect of social life (economic, cultural, educational, etc.)³⁵ and which are offered as alternatives to views of society which essentially involve the state. These visions are accompanied by the (anarchist) rejection of coercive schemes and are based on reasonably optimistic views of human nature³⁶ and accounts of morality.

Moving to Philosophical Anarchism, I begin with some terminological points in order to arrive at the view I want to defend. Horton distinguishes between positive and negative philosophical anarchism.³⁷ Positive anarchism is the stronger, since it provides an explanation of the moral impossibility of the state and thus of political obligation. Negative anarchism is weaker for it relies merely on 'justification by default', that is, the failure of all attempts to provide supportive accounts of political obligation is taken to be reason enough for denying the existence of such obligation even though no 'positive' analysis of why such attempts are bound to fail is provided.³⁸ These terms correspond to a certain extent to Simmons' notions of 'a priori' and 'a posteriori' anarchism. A priori anarchism states that the impossibility of legitimacy is inherent to the nature of the state, that some essential feature of the state makes it impossible for it to be legitimate.³⁹ In contrast, the claim of a posteriori anarchism that 'all existing states are illegitimate' is defended mainly by empirical observations of actual states and is not based on an argument that there is some inconsistency, or incoherence, in the *possibility* of a

³⁴For these notions, see, Horton 1992, pp.119-120; Miller 1984, chapters 4 and 12.

³⁵For example, Kropotkin 1892; 1899; 1902; Bookchin 1980; 1997.

³⁶For an approach to the notion of human nature, its use in the anarchist tradition and its role in the anarchist theory, see Marshall 1989. His proposal of abandoning the idea of human nature as a 'fixed essence' (p.138), and of viewing human species in an evolutionary way, taking into account the continual interaction of many aspects in it and their capacity for 'self-regulation' within open possibilities (pp.139-144), expresses a view of human nature which is compatible with the position of this thesis.

³⁷1992, p.124.

³⁸Ibid.

³⁹For example, for Robert Paul Wolff state authority is necessarily incompatible with individual autonomy (1970). In general, a priori philosophical anarchists are moved by prior commitments - e.g., to voluntarism, to egalitarianism or to communalism - which they see the state to contradict fundamentally (see Simmons 1996, pp.20-21).

legitimate state, though this form of anarchism is pessimistic about it.⁴⁰ That is a central reason why a posteriori anarchism does not necessarily lead to political anarchism, why its project is presented as mainly one of theoretical criticism and of enlightenment, and why it leaves room, in many cases, for obedience to particular laws and for the justification of particular obligations of different individuals.

In this thesis I focus on the negative side of philosophical anarchism and set to evaluate its contribution to the debate on political authority. For this, I adopt an alternative terminology, using it to structure the debate. I focus on what I call 'critical philosophical anarchism'⁴¹ and define it through a combination of the features of the definitions just explained (those of Horton and Simmons above) which I find the most characteristic of the anarchist position which is to be assessed. From negative philosophical anarchism I keep the characteristic that it is a theoretical view, based on criticisms of the failures of accounts of political obligation. Yet I do not move on to say that it involves no prior analysis of what is involved in an adequate justification to determine its criticisms. From a posteriori philosophical anarchism, I take this: Simmons argues that a posteriori anarchism is not based merely on justification by default. It is based 'either in an ideal of legitimacy (which existing states can be shown not to exemplify) or in some account of what an acceptably complete positive attempt [to justify political obligation] would look like'.⁴² This feature works as a normative horizon for estimating theoretical defences of political obligation, a prior standard in reference to which a posteriori anarchism derives its negative conclusions about political obligation from the failures of those defences and about political institutions from what these failures reflect about reality.

Given the above two features, I define 'critical philosophical anarchism' as the view which examines the best candidates for moral theories of political obligation and derives from their failure, as a constructive conclusion of its

⁴⁰Simmons 1996, p.21. For this and other distinctions applying to philosophical anarchism, see *ibid.* pp.19-39. See also next chapter.

⁴¹This term is used by Gans for the anarchist position which he explains as 'the denial of the duty to obey the law which is based on a rejection of its grounds' (1992, p.2). But the sense in which I use it in this thesis is different from his, more technical and specific. I give my own definition in the next paragraph.

⁴²1996, p.36 note 9.

own, the result that there is no general political obligation and that in this respect political institutions remain unjustified. Operative in this approach is a prior standard of theoretical criticism merged with some idea of what an ideal legitimate society should be like and philosophical anarchism considers all existing states to be illegitimate insofar as they fail to meet this ideal.

My aim is to closely examine this anarchist position as it figures within the debate on political obligation in order to demonstrate that it offers something valuable to the perspective we have towards political institutions and our relation to them and what this contribution is. I stress both its critical perspective and its ideal of legitimacy because I see them as defining features of this position and that they incorporate those elements which are of essential value in the arguments of philosophical anarchism against political obligation. These parameters are also envisaged as compatible with certain valuable features of communal anarchism.⁴³

The anarchist enters the debate on political obligation with a concern about freedom. He concentrates on the importance for individuals to be self-governed, to be able to have a say on and determine the main aspects of their own lives. But how can this be compatible with external constraints? The respect for self-government and the rejection of constraints are characteristic anarchist arguments, each of which might take, and at times has taken, priority over the other within the anarchist tradition. Yet, an anarchist can insist on the

⁴³In fact, such a compatibility is not limited to communal anarchism. It is, to my mind, necessary in any anarchist vision which displays two features of communal anarchism, namely its recognition of the social dimension of human beings, and its idea of free social relationships and decentralised, co-operative forms of social order along with the attention to matters of economic equality and distribution. (Such perspectives are found in contemporary writings of anarchist conviction such as Bookchin 1997, Carter 1993 and Marshall 1989). The essentially social character of human life is reflected both in anarchist proposals of free social relationships and in the claims regarding the defects of relations of power. These claims have important implications for defences of the state in the light of its coercive character and the corruption underlying it. (For issues which highlight the independence of 'state actors', see Carter 1989; 1993, esp. p.51 note 12; 1995). Communal anarchism contains a positive project, namely the establishment of human co-operative relations free of both domination and exploitation. But its relation to coercion appears unclear and problematic (Horton 1992, pp.122-123). The most demanding project of anarchist theory would consist in a combination of the communal anarchist ideal with the attack on coercion reflected in the exacting perspective and standard of legitimacy which critical philosophical anarchism defines. This thesis will therefore attempt to prepare the way for this combination. In particular, I will aim at understanding what the implied perspective of philosophical anarchism is, and to indicate how it might be applied to the positive horizon of political communal anarchism. For a development of these points see my conclusion. See also note 48 below.

priority of freedom and criticise political institutions without any prior rejection of constraints in general. The anarchist is sensitive to the fact that *political* constraints create problems for self-determination. It is with this realisation that the critical philosophical anarchist criticises the way traditional defences of political institutions work. What he wants to point out is that if these defences start with a different perspective on political institutions, one which involves centrally the task to require and show a positive relation between them and self-determination, they will address more successfully the difficulties which they face in their effort to justify political reality. The debate, and with it our relation to the state, can then develop in a different light, which will provide more fruitful ways of accessing political institutions. It is these features which are significant in the position of critical philosophical anarchism and which is the task of this thesis to explain and defend.

3.Underlying Ideas.

In the rest of this chapter, I present the main considerations which underlie my programme as just stated.

- (a) Critical philosophical anarchism has been criticised as mere scepticism: as a purely negative view, which works as a denial of positive defences of political institutions without offering an alternative positive proposition of its own.⁴⁴ One of my main concerns is, without denying its theoretical function (which I keep and stress in my definition of critical philosophical anarchism), to argue that this view involves something more positive than it first appears to involve: I aim at showing that the critical arguments of philosophical anarchism express a prior perspective. Such a perspective is characteristically anarchist in its motivating concerns and its proposals. And is also indispensable for theorists of political obligation to adopt and for the evaluation of institutions more generally. A closer analysis of anarchist arguments against defences of political obligation is the first step towards this

⁴⁴For example, Wolff 1996b. This criticism is anticipated by the usual understanding of critical anarchism as a view relying merely on justification by default (see the presentation of negative anarchism above).

objective. The four conditions on theories of political obligation which the anarchist employs in his arguments play a central role within this analysis in understanding the anarchist perspective. As I suggested in the presentation of them earlier in this chapter, these formal requirements define characteristic features of the political nature of the obligations to be examined. In fact, *together* these conditions *express* the political nature itself, that is, the particularistic, coercive, centralist and exclusive character of the institutions that these obligations relate to. This nature is defined by 'the theses on the political' presented in section 1 above. In my effort to explain the anarchist perspective, I use this point to make explicit how 'the conditions of political obligation', being difficult to dispense with, become useful vehicles of very valuable yet neglected elements of the anarchist position; that their formality leads nevertheless to wide-ranging moral conclusions. In part, the examination of anarchist criticisms of political obligation serves to establish (the role of) these conditions as definitive of the link between the political and the moral feature of the problem of political obligation. I employ this point to demonstrate the value of the philosophical anarchist perspective.

- (b) The anarchist ideal of legitimacy provides another aspect of the anarchist view that I attempt to evaluate which will play a central role in arguing for the positive contribution of that view. Philosophical anarchists defend voluntarist, communitarian and egalitarian visions of ideal society as indications of the proper relations which institutions must involve in order to be legitimate and justified in the eyes of human beings.⁴⁵ Characteristically, these ideals are also in constant interaction with the social visions of political anarchism. The fact that such ideals underlie the arguments of critical philosophical anarchism provides another factor which explains the positive character of this form of anarchism. Both the anarchist social visions and the anarchist attacks on the state aspire to a better understanding of human nature and society and to an assessment of human actions, relations and

⁴⁵On such ideals, see Simmons 1996, pp.19-21; 1999, p.769-770.

achievements which is compatible with the most commonly shared moral values.⁴⁶ This is a ground that can be shared by many anti-authoritarian theorists, with or without anarchist convictions. Furthermore, arguments which bring the defenders of the state and anarchists into conflict are those which refer to issues of an explicitly social character.⁴⁷ The positive horizon defined by political communal anarchism provides a suitable background for addressing these concerns. But I want to argue that such a horizon is compatible with and in fact already incorporated within the challenge of critical philosophical anarchism.⁴⁸ In examining different theories of political obligation in their dialogue with the anarchist perspective, I will approach them in respect of different instances of the anarchist ideal of legitimacy. A related aim is to carry the role of the ideal of legitimacy further: I will examine how, more generally, it can make the task of justification of political institutions harder. I will consider how the debate as defined by the anarchist and its results about political obligation might affect further defences of coercion even within a background presupposing that we need, and remain with, political institutions. The extension of the role of the anarchist ideal of legitimacy in this thesis is an analysis of the effect of the anarchist perspective on any justification of constraints. Thus the anarchist contribution to the political debate will be estimated both with regard to what it offers to the debate on political obligation itself and with

⁴⁶I endorse the claim that anarchists are concerned with 'the quality of relations between people', namely with defending and realising within society direct and many-sided relations, characterised by reciprocity and equal authority and participation (Taylor, 1982, p.3; Raz 1990, pp.16-17).

⁴⁷A good example is provided by the argument from public goods. This argument focuses on the importance of co-ordinating activities in order to secure the production and distribution of goods vital for a decent life, and reveals conflicting intuitions - those of anarchists on the one hand and those of their opponents on the other. For this issue see, e.g., Sanders 1996, pp.266-271; Olson 1965.

⁴⁸Political anarchists oppose the state not only because of its illegitimacy but also because of its essentially coercive, corruptive and, thus, *evil* character. But this characterisation of the state as evil is not an essential element of philosophical anarchism although it may play a part in certain philosophical anarchist views. It is necessary to combine a diagnostic of what goes wrong in coercion, as expressed in philosophical anarchist views, with an explicit prescriptive horizon of harmonious social relations. The required link might be found in a theoretical account which includes a properly articulated *ideal of legitimacy* which will set a standard, elements of which must be met by any vision of society.

respect to the implications of the results of this debate for more general evaluations of political institutions. In these functions, the ideal of legitimacy and the anarchist criticisms become two expressions of one comprehensive view.

- (c) The conditions of political obligation become themselves reflections of the relation between these two expressions: if these conditions reflect the political nature of obligation and help in determining the positive character of the anarchist conclusions against political obligation, this is parallel to the function of the ideal as a standard of moral relations which institutions, with their political character, fail to meet. This standard is merged with a theoretical account of what an acceptably complete defence of political obligation needs to involve, which may be identified as a successful combination of the four formal conditions with the different moral bases of political obligation.⁴⁹ Thus one could say that, the elements of the debate on political obligation as provided by anarchism and its ideal of legitimacy become alternative expressions of a unique outlook.⁵⁰ If the anarchist conclusions about political obligation are correct, both the four conditions which constrain accounts of political obligation and the ideals reflecting proper social relations which states do not meet, indicate something about the

⁴⁹This anarchist understanding of 'an acceptably complete positive attempt' to defend political obligation involves also two narrow criteria of success: that the accounts are 'accurate', namely they offer plausible principles of obligation in 'their most defensible form and appl[y] them correctly' and that they are 'complete', namely they 'identify as bound all and only those who are so bound' (Simmons 1979, pp.55-56). In his criticism of accounts of political obligation, the anarchist first recommends the most plausible ones, then tries to render them accurate and then asks whether they are complete in meeting the four conditions of political obligation (ibid.). Thus the anarchist participates in the development of defensible theories of political obligation and the anarchist conclusions against political obligation are derived on the basis of distinctive criteria of success when applied to defensible theories. This already shows the approach of critical philosophical anarchism to be much more than a justification by default (see Simmons 1996, p.36, n.9).

⁵⁰The category of transactional evaluations of institutions which was introduced in the first section of this chapter is relevant to the combinations presently suggested. In the following chapters, it will become clear that anarchist ideals of legitimacy reflect the relations that would be involved in a society which met transactional evaluations. And the anarchist's prior idea of an acceptably complete positive attempt to justify political obligation is that of one which would successfully combine the four formal conditions with a moral principle, a combination which is no more than a theoretical reflection, defining the anarchist criticisms, of an application of proper social relations. Thus transactional evaluations, the ideal of legitimacy and an account of a comprehensive theory of political obligation may be seen as three different expressions of a very positive perspective already underlying the anarchist challenge.

political which every theorist needs to attend to, and provide the way for doing so. Together these features comprise the anarchist position which I aim at explaining and defending.

- (d) Critical philosophical anarchism is mainly engaged in what Miller calls the ‘subversive campaign’ of philosophical anarchism.⁵¹ As Simmons highlights, it encourages a substantial revision of our conception of ordinary political life.⁵² More specifically, it questions the common-sense conception of the relationship between governments and their citizens in terms of political obligation. While philosophical anarchists accept the traditional understanding of political obligation as a special relationship with our own governments, they deny its existence. This entails the rejection of a general moral attitude towards the state and adoption of a critical stand from which the propriety of obedience to the law is assessed on a case by case basis.⁵³ Raz, who also denies the existence of general political obligation, proposes another possible attitude, namely ‘respect for law’, which can apply in the absence of such an obligation, and supports a possible special relationship between institutions and those who adopt that attitude.⁵⁴ But even the anarchist denial of a special political relationship and an insistence on a critical stand does not for philosophical anarchists, such as Simmons, result in widespread disobedience and Simmons claims that our political lives will not change radically at the practical level.⁵⁵ Horton makes a crucial point with regard to the last claim. He argues that change of our ordinary thinking of ‘political relations’, i.e. that which construes such relations in terms of political obligations, will have ‘*radical*’ effects on the way we usually talk about our relation to our governments as ours and, through this, on our ‘political relationships’ and lives.⁵⁶ Thus, he conceives the challenge of philosophical anarchism as a dangerously radical one: it is ‘the subversion of

⁵¹1984, p.18.

⁵²For example, in 1979, p.200; 1987, p.279; 1993, p.263; 1996, p.29.

⁵³For example, Simmons 1993, p.269; 1996, p.31.

⁵⁴Raz 1979a, pp.94-99, 104-105; 1979b, chapter 13.

⁵⁵Simmons 1987, pp.275-279; 1993, pp.261-269; 1996, pp.31-32.

⁵⁶1992, pp.135-136.

political relationships through undermining the shared understandings which are constitutive of such relationships'.⁵⁷ That is why Horton wants to undermine philosophical anarchism. I disagree with Horton's attempt and, following Simmons, also reject the claim that a shift in our conception of our political relationships will entail widespread disobedience and chaos. Yet, I agree with Horton that such a shift can affect radically our political relationships and lives. In my opinion, philosophical anarchism both requires drastic revision of our thinking of political relations and entails radical change in our political lives. However, I see this as a positive effect of the anarchist perspective.

I proceed, then, as follows: in the next chapter I present the overall aim, structure and content of my argument in this thesis. More precisely, the role of the first chapter is to present the problem and the main arguments which will be developed in the following chapters. Then in chapters Two to Four, I provide an examination of the arguments for political obligation as scrutinised from the perspective of critical philosophical anarchism. This task must be completed in order to understand the anarchist criticism. In chapter Two I will examine the anarchist criticisms of voluntarist theories of political obligation. In Chapter Three the object of criticism will be a justice-based theory. Chapter Four will examine the anarchist dialogue with a reciprocity-based theory, to wit: the principle of fairness as formulated by Hart and by Rawls. The main strategy is to extract from anarchist arguments valid claims which will form the basis of my analysis of the anarchist contribution. The focus of this strategy will be the perspective and ideal as well as the arguments about self-government and political constraints which characterise critical philosophical anarchism. I will then move in Chapter Five to a direct defence of the distinctive contribution of critical philosophical anarchism as exhumed from the debate on political obligation. I will analyse the character and claims of the special perspective involved in the anarchist position and I will examine the role of this perspective and of the ideal of legitimacy in improving accounts of justification of constraints more generally. In the final chapter, I will

⁵⁷Ibid. p.135.

conclude with an overview of the anarchist contribution as defended in this thesis along with some remarks on the tasks of both philosophical and political anarchism in the light of this contribution.

Chapter One. What the Problem Is.

In this chapter I set out the central problem and argument developed in the thesis. For this I focus on three theorists, each of whom relates in a significant way to the critical, philosophical anarchist position. I discuss Rousseau as a traditional theorist whose view is a basic inspiration for the anarchist approach to political institutions. Joseph Raz's theory is analysed as a view largely compatible with critical philosophical anarchism. I use it to illustrate how accounts of the state motivated by the anarchist perspective can be understood and improved. Finally, I discuss Simmons as a representative critical philosophical anarchist, from whose approach, however, I depart and which I criticise on central points in my defence of critical philosophical anarchism.

1.1.The paradox of authority.

We live in a world dominated by political institutions. We find our lives ruled and controlled by them. We mostly take this situation for granted. How did we get to such a state of affairs? And is it how it should be? In many other areas of our lives we feel that things should be under our own control. We feel that it is important to be able to decide and make choices for ourselves. We feel it important that we become free to act within a background of various options and be free to track the best options for ourselves in life. We don't want other people to tell us what to do and take control over what concerns us. So why in the case of the state do we take rule for granted? Even within the state, the desire for self-government survives in the form of a dissatisfaction, when there comes a point that political interference feels unbearable. Why, then, do we so readily accept political power? Should we do so?

We can attempt to answer the philosophical question of justification of authority by answering first the question of its genesis: why did centralised power arise? And how? And why does it continue to exist now? A good explanation about *how* this happened is the *hybrid* approach defended by

Michael Taylor.¹ This view focuses on the development of gross inequality and the weakening of community and says that these are both the concomitants and the consequences of state formation. More specifically, state formation is based, firstly, on the enhancement of the leadership of acephalous² primitive societies. Leadership was enhanced by the provision of services to the members of the community through the arbitration of a system of redistribution; and by the existence of threatening conditions, such as ecological pressures and external enemies, which led to the need for concentration of power for the arbitration of redistribution of goods to be possible. The second reason for the formation of states is the inhibition of fissioning, that is, the prevention of a continual separation of large groups into small, self-sustained ones. This happened due to the threatening circumstances mentioned above, which, by their nature, tend to promote coherence of a group. Such a coherence led, in turn, to the weakening of community, since fissioning helped people to live in the decentralised and self-sufficient way which community requires. In other words, state formation is explained as follows: when there is surplus of goods, redistribution creates efficiency and the leader's capacity to discharge it makes his authority acceptable. Also, geographical circumscription and the threat of enemies make people leave small communities and concentrate under the protection of a beneficial, and thus already accepted, leadership within an enriched, growing community. This, in turn, leads to the concentration of force and to political specialisation. This latter is the hallmark of the state and involves inequality of power, or, political inequality. Also, the specialisation and exchange of goods which effective production and redistribution under a centralised leadership involve, lead to economic inequality, which functions in favour of the rulers and is thus maintained by them. So inequality is both the concomitant and the consequence of state formation and it is 'the *integrative* role of the emerging central power' that led to this formation.³

¹For the analysis of the origins of the state which follows, see Taylor 1982, section 3.3.

²'Acephalous', or 'acephalos' in Greek, means 'without a head' (<a- (without) + 'cephali' (head). Here it means without a formal leader.

³Taylor 1982, p.133.

This explanation of how the state arose is, however, more important because of what it says about *why* the state was created. This opens the way to addressing our central concern with *why it seems justifiable*. The answer lies in the integrative role of the emerging central power because this means that the leadership was *beneficial to the people*, good in providing them with services, and thus *voluntarily accepted* by them.⁴ This is a good reason for wanting the state: it is justified as long as it is *at the service* of those who are ruled; as long as, that is, the state serves as an instrument to the means of the individuals who make up the societies governed by it. Being created for their own good, it can be seen, for this reason, as *their choice*, which means that political power is compatible with the capacity of, and desire for, self-government. Even better, it is a good way for individuals to preserve and enhance this capacity. Traditional, state-of-nature-based defences of political authority make exactly this argument and their case for the existence of the state seems strong. But, paradoxically, this means that *we decided to be ruled because we don't want to be ruled*.

The appearance of this paradox, is the starting point in this thesis for examining the anarchist position and its approach to the problem of authority. The paradox reflects the idea that the best way to justify rule to individuals who can be, and have the right to be, self-ruled and thus find constraints undesirable, is to show that the rule is their own decision. That government is the result of self-government in the sense that *we* put constraints on ourselves. To *decide* to be constrained seems the most promising and comprehensive account of political constraints. What is required is to demonstrate how this can happen: the preceding explanation of the origins of the state outlines the answer, but we need to make sure that this is indeed what happens. This view shows that the paradox is not in fact a paradox.

Yet its seeming paradoxical character helps reveal a mistake in the defences of political institutions. The problem lies in that showing the state to be good for us does not amount to showing that it is voluntarily accepted. The former can be a reason for the latter, and a good one, but it is not the

⁴Ibid. pp.133-134.

latter. Unless it is our own actual appreciation of the beneficial character of the state that leads us to accept the state, the state cannot be seen to be the result of self-government, namely the result of the participation and control of those who want to survive and live together freely. One could say that “being in our benefit” makes it a reason *for us* to want the state. And a reason for us is our own reason and thus our choice. But, again, we need to prove that the state is beneficial on the basis of reasons that are actually for us and thus can be, or is, our choice. The mistake of the state defenders lies in that by demonstrating the merits of the state they also thought that they demonstrated its legitimate authority. But a benefit which is proved merely to be likely to be a benefit for some is not such a benefit unless it is based on their choice. Also something that has been a benefit for some in the past, is not a benefit for those concerned at present. For the latter to be the case, it needs to be actually a benefit at present and to be seen as such by those it concerns.

The defenders of the state (those who adopted the theories which will be examined in the following chapters: for example, social contract theories of political obligation)⁵ committed themselves to a correct starting point when they attempted to defend the state on the basis of self-government. But this involves a continual assertion of choice. Instead, they provided reasons for seeing institutions as desirable and thus deserving acceptance, which could motivate choice but which themselves are not choice. And they thought that such reasons can be given once and for all, which neglects the continual need for the expression of choice. By giving an argument for the benefits of political institutions, defenders could motivate their existence. Yet they could not motivate their authority. And they could not motivate their existence once and for all. But they thought that their argument does exactly this. The result is that, in addition to showing that the state is necessary to provide order and

⁵When I refer to ‘defenders of the state’ I mean all those theorists who defended accounts of political obligation that reflect the approach I criticise in this thesis from the perspective of anarchism. Such theorists range from traditional political philosophers, such as Hobbes, to contemporary theorists, such as George Klosko. But their approach might be adopted by any theorist or individual. So, the argument presented here and developed in the rest of the thesis concerns the accounts which I discuss in the following chapters and addresses whoever might adopt them as views on justified authority, rather than a specific and complete list of theorists.

safety, they started facing the state as a good in itself and/or an entity over and above individuals, with independent existence. This might be described as a romanticised view of the state, and such a view may be what lies at the bottom of our unreflective acceptance of it as an inevitable reality and what makes us forget its defects and our initial dislike of constraints. It has not yet been proved that constraints are beneficial for us as constraints we choose *ourselves* to impose on ourselves and on one another. Showing constraints to be self-imposed is the only way to show that the state exists for the sake of those it constrains and not at their expense.

The philosophical anarchist presses this point within the debate on political authority. In order to explain this position better, I want to illustrate the above argument about the seeming paradox. There is an effective argument for the state which is based on the point that autonomy is extremely important and that for the state to be justified it needs to be shown to protect it. But, the argument goes, for this the state need not be autonomously chosen.⁶ People make mistakes in their choices and the right kind of choice cannot be derived from the universal consent of actual individuals. Rather there are concerns that are primary for us, good reasons that apply to us, whether or not we are able to see them. When the agents of the state are sensible enough to find and serve these reasons, then we are better off if we let them do so. We should make sure that a state serves good reasons that apply to us, whether or not we can actually choose them. In this way we have our capacity to be autonomous protected and enhanced, through a good government built on such reasons. So a good government is justified because it protects autonomy but it is not the case that we choose it autonomously.

This is a good starting point for approaching our relationship to the state. It asserts the value of autonomy without facing the difficulties arising when we try to defend it through individual consent.⁷ And it clarifies why the protection of important benefits is essential for our self-government even if we don't actually choose them.

⁶See Raz 1979a; 1985; 1990. This argument constitutes Raz's theory of the state, which is explored in the works just cited and is analysed below in this chapter (in section 1.3.).

⁷For these difficulties, see chapter two.

This argument the anarchist will eventually concede as a basis for defending the state. Yet, in order for the defender to make proper use of this perspective, he needs first to see the point of an insistence on choice which the anarchist represents. The anarchist claims that for the state to be legitimate, it needs to be shown to have been chosen. He finds a point in a perspective which argues that a good government is good *because we choose it*; it is *our choice* that makes it that it protects us. This idea implies that we are self-governed *through* the state: rather than being that the state is justified because it allows us to be self-governed and enhances this capacity, the argument is that the state can be justified only if it is a way through which we govern ourselves. The difference between these two approaches is that while the former sees autonomy to be respected because it is protected and served through a good government, whether or not we choose that government, the latter claims that autonomy is respected only if we choose the state so that it becomes positively a way through which we govern ourselves; the state is good because we choose it.

This difference is important, because each view has a different criterion of justification. For the one view, the respect of autonomy which government is expected to show consists in finding and serving what is right; freedom is realised through the realisation of good reasons. For the other view, autonomy is shown to be respected by government only if government becomes itself a way through which we exercise autonomy, and maybe the best. This distinction is crucial also because it points out a confusion that needs to be avoided in evaluations of the state. The romanticised view of the state exhibits this confusion: it emerges from an illegitimate move from unjustified identification and slide between one criterion and the other. It sees the service of good reasons on the part of the state as a way in which the state *makes* us autonomous instead of just *allowing* us to be autonomous. It identifies rightness, or merit, with individual authorisation. It is this assumption that leads defenders to see the state as an independent good in itself, as inherently connected with and as expressing the value of persons and of the interaction among them.

As a new alternative, the critical philosophical anarchist accepts the approach which focuses on good reasons with regard to some justifications of

the state and yet insists on the value of choice for the purpose of political relations. Anarchism returns to choice in a way different than that of the second approach and with a criterion which becomes less problematic: it reminds us that it is important that through the state we *remain* free, rather than becoming free. What is the importance of such an insistence on choice?

At the beginning of this chapter it was pointed out that in many areas of our lives we care mostly about being self-governed and about preserving this capacity and right for ourselves, because it is the only secure way through which we can survive and flourish. We do not want our lives to depend on others. The defenders of the state follow this natural way of thinking when they begin to show that the state is at our service. The idea then is generated that the state can be justified because it is created for the sake of, and on the basis of, our very capacity to be self-ruled. Yet now a paradox seems also to be generated: we create a condition in which we are ruled by others in order to remain self-ruled. That is, we do exactly what we care not to do in order to secure what we care about mostly. As explained above, the paradox is not really a paradox but its seeming paradoxical nature helps reveal the confusion in the defenders' argument. It is not a paradox because in order to be self-ruled in some ways we need both ourselves and others to be constrained in some other ways. But, most importantly, it is not a paradox because it is a consistent and reasonable idea that in order to be self-ruled we need to be self-constrained: it is possible and sensible that self-imposed constraints constitute appropriate conditions for individuals to enhance their capacity for choice. When, for example, one decides to cut smoking because it is better for one's health, one puts a constraint on oneself not to smoke again. This constraint enhances one's freedom by helping one to apply the decision with which one chooses to rule one's life in this respect. If the state is a way of our being self-constrained then it can serve as a way of our being self-ruled. The impression of a paradox arises from the fact that it is in the nature of the state that some rule others and so the state is offered as a way of our becoming self-ruled that involves being ruled by others.

1.2. Dissolving the paradox. Rousseau as a paradigm of state justification.

There is a way through which the seeming paradox is dissolved and it lies in Rousseau's intuition that the state is justified only as a way of our being governed by ourselves. As Rousseau states in his *Social Contract*, '[t]he problem [of political justification] is to find a form of association which will defend and protect with the whole common force the person and goods of each associate, and in which each, *while uniting himself with all, may still obey himself alone, and remain as free as before*'.⁸ For such a civil society to be created, individuals must unite under an agreement the conditions of which are unanimously accepted and with the intention to hold each other to those conditions.⁹ By becoming a member of a community created by such an agreement, each individual identifies with the *general will*, which is the united will of all self-legislated citizens and expresses the choice applied within political society. Thus in order to be free the citizen always needs to hold to the general will, 'to will impartially with all the others'.¹⁰ So if he or she disobeys this will, others have the right, based on their mutual agreement, to *coerce him to be free*.¹¹ 'Coercion is legitimate on grounds of freedom because the agent has *chosen* to be coerced'.¹² The idea defended here is that having others to decide for us and serve us with regard to some matters is not a denial of freedom or choice if the nature of their decisions and the content of their choices represent our own choice. We are the legislators, thus the creators of the ways through which we are to be constrained and thus self-constrained and thus free. Yet in order for the defenders of political institutions to preserve this argument they need to attend to it properly as the only way of defending the state in terms of self-government. They need to attend to the proof and preservation of this kind of choice.

⁸Rousseau 1762, book 1, chapter 6 (emphasis mine).

⁹As Ripstein puts it: 'Rousseau's claim is that a community consists in a group of people in agreement both about the conditions of their interaction and their intention to hold and be held by each other to that agreement' (1992, p.224).

¹⁰Ibid. p.231.

¹¹Rousseau 1762, chapter 7: '...whoever refuses to obey the general will shall be compelled to do so by the whole body. This means nothing less than that he will be *forced to be free*' (emphasis mine).

¹²Ripstein 1992, p.231.

As set out in the previous section, there is a difference between seeing something as being justified because it is rightly discovered to causally promote our autonomy and seeing it to be justified because it constitutes a consequence of our autonomy. The anarchist insists on the need for the latter, which captures Rousseau's idea of self-government, to make the argument for the state a defence based on the idea of being free through being self-constrained. But the defenders of the state do not stay consistent in their use of this argument. By focusing on benefits of the state which make it good for us they gradually change the initial argument from choice into an argument for the protection of choice through benefits. They are right to see the fact that the state provides safety as a strong reason to support it but in the end they also see this to make the state a good in itself. Thus their defences end up saying that we are ruled by others in order to be self-ruled. That their view allows the rendering of a paradoxical form to the defence of the state is an indication of the mistake the defenders make in the process. The problem is reflected in the failure of accounts of political obligation which the anarchist stresses.¹³

But there is a way of correcting the state defenders' mistake. By staying clear and insisting on the form that Rousseau gave to state-defence we might come to realise that at one level it is unachievable for the state. And then we may legitimately move to the other argument - still in light of the importance of choice indicated by the argument we cannot achieve in a direct form - which gives an alternative view of legitimacy in terms of autonomy yet is seen clearly as not to be choice-based, and we can pay attention to its specific implications for the state.

If, with Raz, we try to determine what we can tell about how the state works and focus on it as protecting our capacity for autonomy through its service of good reasons, we need to see what direction such a defence takes. It cannot prove political obligation, nor can it justify the state once and for all. It can, rather, concede to the continual instability of the state and

¹³And it is telling of the fact the anarchist observes and indicates with worry: that, by nature, the state involves subjugation in the disagreeable sense of some ruling others with the intention to subject them, which creates inappropriate relations among individuals. See the discussion of Raz in section 1.3. below.

concentrate, as the most important, on the attempt to justify the reasons for which they are subjected to *individuals themselves*, not through actual choice but through reasonable testing and evaluation in the light of the lack of such a choice (which is facilitated, for example, by the enforcement of law through transparent and accountable mechanisms; and which, at some level, is an expression of continuing choice). This is a demanding approach yet one which is consistent as a recognition of the value of choice, not departing from the initial argument in a destructive way. The two arguments come together through a fair compromise: we assert the value of choice while realising that we cannot base the state directly on choice and, in the light of this impossibility, we insist on the importance of finding acceptable ways of justifying reasons to the individuals subjected such that make the defence of the state in terms of goodness a recognition of self-government. The idea of basing government on ethical concerns that we all share begins to arise as the prominent task of justification for the defenders to pursue.

1.3.Raz's theory as an illustration.

Raz's position helps illustrate the preceding discussion. I will use it as a representative example to show how the views on the state offered by those motivated by the anarchist position can be better understood and improved.

Starting from the central anarchist intuition that there is a puzzlement with the idea that 'one person has the right to rule another', i.e., that the right to rule is deeply disturbing as a notion,¹⁴ Joseph Raz sees this puzzlement to be rooted in the fact that authority involves a 'dimension of subjugation' which is distinctive of it, namely it involves duties which are 'deliberately imposed by one human being on another with the aim of subjecting that other to a duty'.¹⁵ Thus, he sees the anarchist complaint to be ultimately about 'the problem of subjugation', namely of *subjection of one person to another*,¹⁶ where unequal dependence is the main aim and is facilitated by giving dependence a specific form. Essentially this 'is a problem of the relations

¹⁴Raz 1990, pp.3-4.

¹⁵Ibid. pp.16-17.

¹⁶Ibid.

between one person and another', which, as will be illustrated throughout this thesis, concerns the anarchist most and remains vivid with regard to political authority.¹⁷

Given this problem, one should at least concede to the idea that 'no unlimited authority can be legitimate' and thus that '[w]e need a doctrine of limited government, i.e. of the principled limitations on the possible scope of governmental authority'.¹⁸ As we will see later in this chapter, this requirement is not a demand simply and primarily to limit the scope of authority as much as possible. Rather, it is a demand to find reasons and principles which determine the nature and functions of authority in a manner such that they make it justifiable to all reasonable, grown-up individuals subjected to it. The suggestion I shall develop, to apply an ideal of legitimacy to further justifications of constraints in view of the results of the debate on political obligation, sets such a background as a primary condition. And the defences provided by various contemporary political theorists, such as Rawls and Dworkin, may be seen to work within these boundaries, in fact to work adequately only within them. Within this framework, Raz's reply to the anarchist challenge is that '[t]he basis of legitimacy is relative success in getting people to conform to right reason'.¹⁹

To explain: Raz's defence of 'practical authority', that is, 'authority with power to require action',²⁰ involves three main normative theses.²¹ These work within the background of his general approach to the analysis of authority, which involves the idea that authority necessarily involves obligations to obey.²² Also it involves the claim that the indispensable feature of authority is 'surrender of judgment', which is not taken to mean that obedience erases personal deliberation but rather that it is not conditional on personal

¹⁷Ibid. I explain this concern throughout the thesis.

¹⁸Ibid. p.12.

¹⁹Ibid. p.13.

²⁰Raz 1985, p.115.

²¹For the following account, see Raz 1985.

²²Because a justified use of force would not be authority unless it included an appeal to compliance, which is meaningful only if there are things to comply to; in short, legitimate authority is usually exercised by giving directives, issuing instructions, it is much more than use of coercive threats, it *imposes duties and confers rights* and thus involves an obligation to obey (ibid. pp.115-118; see this in contrast with Ladenson's view of authority as merely permission to use coercion, all discussed in the introduction, section 1).

examination of the thing prescribed: when individuals follow authoritative prescriptions they do it on the understanding that, whatever their opinion is about the thing prescribed after they have acknowledged the authority, they are expected to follow its directions as given.²³ Finally it involves an account of the nature of authoritative instructions, as ‘dependent’ and ‘preemptive’ reasons for action, namely reasons meant to *reflect* the balance of reasons on which they depend instead of being added to them and reasons meant to *replace* the original reasons on which they depend, yet not absolute.²⁴

Accordingly, Raz’s first thesis is the *dependence thesis*, which concerns ‘the general character of the considerations which should guide the actions of authorities’²⁵ and is the position that authorities should act on dependent reasons in order to meet an ideal exercise of authority.²⁶ The second thesis is the *normal justification thesis*, which ‘concerns the type of argument required to justify a claim that a certain authority is legitimate’²⁷ and is the position that for authority to be justified it should be shown to be the best way for individuals to conform to reasons that apply to them, reasons that they are themselves committed to.²⁸ This thesis says that ‘*the normal and primary way to establish that a person should be acknowledged to have authority over another person involves showing that the alleged subject is likely better to comply with reasons which apply to him (other than the alleged authoritative*

²³Ibid. pp.118-122. For this idea, see also Friedman 1973: the first distinctive feature of authority is ‘surrender of private judgment’, which means that with regard both to conduct and to belief an individual who accepts authority recognises that someone else’s prescription is to be followed simply because it comes from one ‘acknowledged by him as entitled to rule’, that that person is entitled to decide for him or her on certain specified areas without any need for persuasion through further argument whenever a relevant issue arises (pp.63-68). The second distinctive feature of authority, which is relevant to the present discussion, is the ‘mark’ of authority, namely the need to provide the sign or credential of authority through ‘some public way of identifying the person whose utterances are to be taken as authoritative’, which regards ‘the recognition and acceptance of certain *criteria* for designating who is to possess this kind of influence’ (ibid., pp.68-71, emphasis mine). It is also important that we concentrate on the *source* of authority, the source of the special sort of reason for action that authority is meant to denote, rather than its content (ibid. pp.60-61), and that we find this on *the person* and their *status* (pp.65-67).

²⁴Raz 1985, p.121.

²⁵Ibid. p.115.

²⁶Ibid. pp.122-129. Namely, that ‘[a]ll authoritative requirements should be based, in the main, on reasons which already independently apply to the subjects of the directives and are relevant to their action in the circumstances covered by the directive’ (ibid. p.125). Yet, while they reflect reasons that apply to the subjects of authority, authoritative reasons still ‘make a difference to what [the] subjects ought to do’ (p.126).

²⁷Ibid. p.115.

²⁸Ibid. pp.129-133.

directives) if he accepts the directives of the alleged authority as authoritatively binding and tries to follow them, rather than by trying to follow the reasons which apply to him directly'.²⁹ This is the crux of Raz's defence of authority. Together the dependence and the normal justification theses 'articulate the *service conception* of the function of authorities, that is, the view that their role and primary normal function is *to serve the governed*'.³⁰ And this leads to the third normative thesis that Raz adopts. That is, to the *preemption thesis*, which 'concerns the way the existence of a binding authoritative directive affects the reasoning of the subjects of the authority'³¹ and is the position that such requirements pre-empt the reasons they are to serve, when they guide action they replace their underlying justifying reasons.³² The resulting idea is that because authoritative reasons should, in order for authorities to be justified, be dependent on already existing underlying reasons, authorities 'should have the right to replace people's judgments on the merits of the case'.³³

Here let me note that the contractualist approach to authority, which will concern us extensively in this thesis, adopts the service conception of Raz and the ideas reflected in the two theses which compose it: according to it, authority can be justified on the basis of reasons which represent, apply to and are the best for the individuals subjected. Yet this approach departs from Raz's third thesis. In contractualism the central idea is that in the case of practical justifications such as those concerning political authority the relevant reasons have to be explicitly justifiable to those they concern, thus in the social world it is important that individuals actually *see* the reasons that apply to them. Practical reason differs from theoretical reason and in the case of the former individual judgement can never really be replaced. This is because in theoretical reason the point is to find the truth as it applies irrespectively of individual opinion (as is the case with axioms in mathematics), but in practical

²⁹Ibid. p.129.

³⁰Ibid. p.131, emphases mine.

³¹Ibid. p.115.

³²Ibid. pp.133-137. The thesis claims that '[t]he fact that an authority requires performance of an action is a reason for its performance which is not to be added to all other relevant reasons when assessing what to do, but should exclude and take the place of some of them' (ibid. p.124).

³³Ibid. p.135.

reason the truth is determined on the basis of individual evaluation and interaction itself. As we will see in the main part of the thesis, this position leads the contractualist to a distinctive method of justification which gives a special role to choice, and is of great importance for the debate on political authority.

In contrast, within the context of his own theory as described above, Raz sees 'theoretical' authorities, referring to 'authority for believing in certain propositions', to more likely have the same structure with practical authorities and to be supported in the same way by his dependence thesis.³⁴ And it is crucial to note that he relates his account strongly with the idea of theoretical authority when he focuses on authority in terms both of 'its expertise (or that of policy-making advisers)' and, more importantly, of its 'ability to secure social coordination'.³⁵ This assimilation seems to sit well with his normal justification thesis and the service conception as well as with further general ideas which motivate his view and which I will discuss in my criticism below. But it also brings to the fore the concept of '*an* authority' with its special characteristics.³⁶ More precisely, this notion of authority maintains that deference to someone as authority is based on their special knowledge and the presupposition that others are debarred from such knowledge. The idea of authority here is one putting 'the person prior to the system' (the latter concerning established procedures for creating authority, which are prior according to the idea of '*in* authority'³⁷) and focusing on special capacities and the quality of one's decisions as what sets one apart from others, irrespectively of whether they accept that person or not, and as what makes one an intermediary between the world and the rest of us who adds something to it for us to take - it centres on *differential access*.³⁸ Also, this notion of authority presupposes a kind of inequality, namely that there are personal differences (unequal capacities) and a hierarchy prior to the authority

³⁴See, for example, *ibid.* p.129.

³⁵1990, p.6.

³⁶For the following analysis of this idea, see Friedman 1973, pp.74-85, emphasis mine.

³⁷*Ibid.* pp.77-80, emphasis mine.

³⁸*Ibid.* pp.75 and 80-81.

relationship on which that relationship is based.³⁹ Given the involvement of these features in the idea of theoretical authority, its use within Raz's account must be approached carefully. I will explain how in the following paragraphs.

Finally, Raz sees his account to make the surrender of judgment, characteristic of authority relations, compatible with keeping one's moral responsibility.⁴⁰ And he situates his position in relation to the liberal theorising on authority. He explains that the liberals focus on the Rawlsian 'duty to support and uphold just institutions' as a proper way of justifying limited government, while his own account is offered as an attempt to answer the prior question of an 'understanding of which institutions are just' - or, to be 'setting the question in a certain way. One has a duty to uphold and support authorities if they meet the conditions of the service conception'.⁴¹

Given the preceding analysis, we can examine now how central aspects of Raz's view bear on our argument.

Raz's normal justification thesis respects the anarchist idea that authorities, if they are to exist, can exist justifiably only if they are shown to be *for* the people and not vice versa. This is already claimed by the service conception. And the position reflected in the combination of all his theses, that it is only on the basis of the independent reasons which determine the moral responsibility of people that relations of authority can be accepted, meets the anarchist perspective on justification. In the debate on political obligation anarchism establishes a demand for justification which has been neglected and this demand activates an ideal of legitimacy as a constant test on any account of constraints. This throws new light on Raz's account. His account is offered to be explaining which institutions are just. Such an approach can be seen as functioning within the background of justification established by the anarchist:

³⁹Ibid. pp.82-85. A second condition, which however does not concern us primarily here, is that the knowledge available to the person of authority should be 'in principle available - at least to some humans', i.e., that there exists an "epistemological" framework', a 'class of things capable to be known', this involving the second-order 'belief that the mind of man can have contact with the reality on which [the relevant] authority speaks' (ibid. p.83).

⁴⁰Raz, 1985, p.139.

⁴¹Ibid. p.138. Raz's account also becomes a basis for the attitude of 'respect for law' (it is actually what grounds its application, meaning and validity), which he sees as an acceptable expression of the morally desirable sense of identification with our societies and thus one which binds to the authorities of their societies those who adopt it (see 1979a, pp.94-99; 1979b, chapter 13).

Raz's theses set the terms of the moral acceptability of constraints. And his claim that the dependence thesis articulates a condition for the legitimate exercise of authority can be read in the language of the anarchist ideal of legitimacy: only institutions which serve moral values that are generally acceptable are justifiable. This correlation will be understood when we will see how the anarchist ideal of legitimacy arises.

Also, it is important that Raz recognises that 'a complete justification of authority has to do more than provide valid reasons for its acceptance', as is the case with the normal justification thesis.⁴² Such an account 'also has to establish that there are no reasons against its acceptance which defeat the reasons for the authority', namely that the justifiable ways in which its functions are not accompanied by aspects which defeat their acceptability, an important kind of reasons against its acceptance being that concerning 'the intrinsic desirability of people conducting their lives by their own lights'.⁴³ This recognition meets the fundamental anarchist idea that our approach to political institutions needs to start from a prior consideration of the undesirability of constraints, of the need to consider both the defects of political institutions and their merits rather than focusing only on the latter, which, as will be argued, helps reformulate the debate. And the focus on people's initiative, which is a strong motivating reason for such an outlook, expresses the very anarchist concern with the primacy of freedom and the importance of creating a background of appropriate relations between them which enables people to control meaningfully their lives. In the light of these considerations, Raz's justification thesis qualifies to be one that functions properly within the background of justifications of limited authority as determined by the anarchist ideal. The whole account of Raz then is thoroughly characterised by the anarchist perspective and the way that perspective determines our approach to political institutions. And each of the specific elements of this account acquires a clear meaning and position within the framework established by the anarchist as one settling the tasks of political theory and action.

⁴²1985, p.132.

⁴³Ibid. pp.132-133.

However, in order for this account to work properly, there are certain aspects that should be approached with caution. The considerations shown in the previous paragraphs to be recognised by Raz can apply to his view provided it satisfies certain conditions. Although the idea that the justification of political authority lies in its being an efficient vehicle of the reasons of individuals as moral agents is intuitive, its real force within political reality lies in making sure that authority is actually and continually proved to be such a vehicle. We need methods of applying the ideals of legitimacy such that make sure that people understand their reasons, that they see how those reasons apply to them, and understand authorities to serve them properly and also feel capable of overthrowing them the moment they cease to do so. The view that authority may do well in helping us satisfy reasons that apply to us is valuable when used in the critical spirit that the anarchist encourages with regard to political obligation, and which extends to every evaluation of constraints, rather than in a spirit of confidence which leaves authority unquestioned in these respects. In the end, the relation of the anarchist position to accounts of limited authority is a natural consequence of the central anarchist thought that it is extremely difficult to legitimise political institutions.

Against such a background, the idea of 'an authority' is not helpful. The critical outlook which we need to adopt and apply with regard to political institutions contrasts with this conception. The concern with proper relations between individuals and with a sincere exercise of moral responsibility and control over their affairs, which makes active participation indispensable, opposes a view of expertise based on exclusion and differentiation. It is the importance of rejecting the idea cultivated throughout history that there are areas of exclusion and groups of agents who can entirely and constantly decide for the rest, with its resulting differentiation among people and the subordination of some to others, that motivates the anarchist challenge in the first place. The notion of 'an authority' encourages that idea and raises expertise to the level of an exceptional capacity and a higher goal. Its connotations to differential access obscure the crucial understanding of social life as a practice which concerns us all equally and for which we are all qualified. When we accept that the anarchist challenge expresses a legitimate

and valuable concern, we cannot attempt to meet it by applying such elements, which it itself falsifies.

Raz's view constitutes a representative way of how to account for claims of authority within the framework of justification defended by the anarchist, but his understanding of theoretical authority must not contain the connotations indicated above. To avoid this it is important not to identify practical authority with theoretical authority. In practical reason it is not enough to find and follow the right answer. Rather it is crucial that we participate in formulating and applying such answers to ourselves. Individuals must be able to *see* the reasons that are served by authorities as justifiable to them. This is the impulse involved in the contractualist rejection of Raz's pre-emption thesis and in the anarchist insistence on the role of choice. Ultimately, it is the idea that political institutions can be an authority because they are based on an authority which we all are that Raz's theory facilitates and should be interpreted to account for. And it is the task of ensuring in every case and at every level that authorities qualify as ways of discharging our social responsibilities and goals that the anarchist forces on us, which is what makes justification a hard process.⁴⁴ Thus the idea of expertise, if used at all, must be seen as a difficult exercise rather than a prior ideal - something for political institutions to be actually and continually proved to qualify as and to become, by approximating to the ideals of legitimacy in the way the task of justification demands. It itself becomes an issue of constant evaluation which concerns all of us.

1.4.The argument for Critical Philosophical Anarchism.

In the rest of chapter one I outline the main argument developed in this thesis in defence of critical philosophical anarchism. This argument takes two directions. On the one hand, it examines how critical philosophical anarchism

⁴⁴We should remember that in fact the anarchist critical impulse rejects the 'surrender of private judgment', and sets to confine it to the largest possible extent when it is inevitable that we live with authorities, of which this aspect is a central characteristic. It is the importance of making this feature as compatible as it is possible with the basic inalienable capacity which freedom is and with the kind of social relations which it requires that characterises the demand of justification established by the anarchist. This makes a central concern of this demand that the surrender of judgment, whenever it occurs, genuinely reflects an aspect of *our* authority.

helps improve our perspective on the state by presenting an alternative to dominant positions on it (section 1.4.1). On the other hand, it focuses on a way of understanding critical philosophical anarchism which departs from, and improves on, the perspective of its theoretical defenders (section 1.4.2).

1.4.1. An alternative to prominent positions on the state.

The aim of this thesis is to demonstrate the positive character and contribution of critical philosophical anarchism, an anarchist view which argues that there is no adequate defence of political obligation and concludes that in this sense the state is illegitimate. This position helps us see that the reasons on the basis of which we set initially to justify the state are correct. And they are exactly those motivating the anarchist in the first place. But the method sought by the defenders of political institutions for satisfying these reasons is wrong. The anarchist reminds us and focuses on what it leaves behind. In fact it involves a perspective which we can all share. Anarchism is the only perspective which holds consistently the view that we want to be self-governed and that the only way to be so within the state is to prove it to be a self-imposed constraint. An analysis of the dialogue between the philosophical anarchist and the defender within the debate on political obligation is critical for this purpose and will be the central part of this thesis. Its result will be that we have no political obligations and this, I will argue, can be treated by the anarchist as showing that we don't have a comprehensive argument for such a special relationship to the state and as a good reason explaining why we can't have such an argument. This, in turn, will open the way for seeing a higher challenge to the enterprise of justification as a whole: maybe we chose the wrong argument altogether. Does this lead to the conclusion that there is no way to ground the legitimacy of the state? In terms of political obligation, the probable answer is no. The state offers no additional ethical concern over and above the ones that we can share with one another. Self-government cannot be expressed by consent within the state.

Yet there is a way of looking at the state which may be helpful. We can bracket the question of political obligation - take into account its results but leave aside any effort to change them - and concentrate on something else:

ethical reasons that we share are expressive of self-government and it is those we should try to prove the state to be based on. It can be legitimate in terms of not violating such ethical concerns and of being compatible with them. We can see the state as an association which we create for goods that we see ordinary associations not to provide for. We are social beings. Yet our societies are the result of *our* collection and interaction. The state is not something mysterious, an entity over and above us which raises special demands. Once we say, as the traditional defenders did, that the state frees us, we enter a romanticising thought about it. Instead we need to remember that the state is not a good in itself and it does not have an independent existence and value of its own. We need to see that dominant defences of the state have gone too far in attempting to identify beneficial order as a source of choice. Constraints are always constraints and being good for us does not change that. The real challenge is to see whether the political world in which we found ourselves to live and which we might not want to abandon, is one that deserves to continue to exist, on the basis of reasons that apply to us. This sense of legitimacy is our aim.

Political anarchism says the state is an evil. And, naturally from this, it rejects any effort of justification of coercive institutions: of their existence and legitimacy and our obligation to them. Critical philosophical anarchism does not reject the state in such an absolute way (note that strong philosophical anarchism such as the view of Robert Paul Wolff is more directly connected to the strong demands of political anarchists, but this is not the view I examine). What it does is to reject the legitimacy of existing political institutions by proving that there is no adequate moral defence of political obligation and in view of an idea of what a legitimate state would be like that it has. Also, it stresses the distinction between different kinds of evaluation of political institutions. In the face of these characteristics, critical philosophical anarchism has been criticised as a purely negative view, one that is sceptical of any positive effort of justification without providing its own alternative solutions to social problems. I disagree with this criticism. Most of the argument of this thesis is an attempt to show dissatisfaction with the defenders of the state, whose method does not address the fundamental question about the very existence of political institutions.

There are two prominent, opposing positions on the state that are mainly defended. And they seem to be the main options available. On the one hand, the defenders of the state focus on the fact that it can provide the necessary peace and order. From this they move further to assert the state as an end in itself, as having an independent ethical status of its own and, for some, as being over and above individuals. We are urged to believe that we should have it as a matter of moral necessity. On the other hand, the second position starts from the idea that we are rational adults who do not need the state to tell them what to do. Its advocates are motivated by an opposition to extended state interference, even for reasons of welfare. And they aim at rolling the state back, creating an as much as possible minimal state, which uses just the army and the police to protect individual property. The first is the romanticising approach to the state, or, an idealism about it, which obscures the fact that the state is created by individuals and is a collection of people who come together in a particular way for their own good. The second is the libertarian position, which focuses on undermining the state and limiting its role to practices that can elicit individual consent. It nevertheless sees autonomy only as the independent interest of self-contained individuals and understands human relations only in terms of negative rights and duties, neglecting thus the sociability and interdependence of human beings and tending to endorse great inequalities. But, are these the only defensible options we have? Should we either consider the state as an imperative moral ideal or try to reduce it as much as possible or even reject it completely?

The argument of this thesis is that there is a third option which has been neglected by these two perspectives. And that this is the position offered by the critical philosophical anarchist. This anarchism agrees with the libertarian that we are self-ruled and we don't need the state to decide for us. From this, it points out the mistake of romanticising the state. The anarchist criticism of political obligation re-enforces the claim that the state should be seen as an instrument to our means as morally developed (adult) agents, that it exists to serve us and has no ethical value over and above us. But seeing this, the solution is not to create a minimal state or to reject the state completely. Philosophical anarchism offers a perspective from which we can be entirely diffident of the state while at the same time accepting a full welfare state.

This means that the existence of the state does not replace our critical assessment of it but, at the same time, when it exists it is better that it covers more areas of social need rather than less, otherwise its functions are characterised by self-generated and unjustified coercion. In this light, the anarchist ideal of legitimacy stresses that our focus should be on *quality*, rather than quantity; on the legitimacy of the character which state authority takes when exercised. This is the most reasonable position for us to adopt while living in the state. As a result of this position, the anarchist is with the friend of the state in that we should help and offer our positive participation while living in it.

1.4.2.Improving the way critical philosophical anarchists see their position.

Simmons' theory as an illustration.

According to the preceding argument, prominent positions on the state are unsatisfactory. But, the view that philosophical anarchists themselves have about their position is also unsatisfactory. This part of my argument is necessary for a demonstration of any positive contribution on the part of critical philosophical anarchism. Although a discussion of Simmons is not the aim of this thesis, I will examine his position as representative of the literature on philosophical anarchism which I find unsatisfactory. Simmons misses nothing of the main characteristics of critical philosophical anarchism defined above (page 47). And these are the features on which I base my account. My aim is to detect and defend something about them which has been neglected.

1.4.2.i.Simmons' theory.

Critical philosophical anarchism is involved in a 'subversive campaign'.⁴⁵ That campaign aims to demonstrate, through the criticism of the state, that the non-existence of a general political obligation affects in general our thinking and acting in the public domain. By leading to the conclusion that there is no general political obligation, the anarchist criticism 'removes any presumption in

⁴⁵Miller 1984, p.18. See last pages of the introduction. For representative bibliography, applying to the rest of this paragraph, see: Wolff 1970, pp.11 and 18-19; Smith 1973, pp.969-973; Simmons 1979, chapter VIII; 1987, pp.275-279, and 1993, pp. 263-269; Green 1988, pp.254-255.

favor of obedience' and with this it 'force[s] us to view the position of man in political society in a different way'.⁴⁶ It forces us to cease to think and act on the assumption that there is a morally binding special political relationship and to approach cases of obedience and disobedience on the basis of independent moral grounds. It invites us to distinguish moral reasons for action from grounds related to a distinctively political status and from the political formalisation of them and to accommodate ourselves to a careful weighing of the various moral considerations that are at issue in social situations. We need then to cultivate within the political structure the way we think about political institutions. We are to begin to consider instances of illegality under a different light. In everyday life, we learn to appeal to particular laws as long as they overlap with morality and to recognise that many of them are arbitrary (for example, policies interfering with harmless private conduct, as is the criminalisation of drugs). In this way, we may gradually get used to depending less on authority in most of the practices and interactions of our social life.

The critical outlook which the anarchist project forces upon us involves a more difficult way of discharging our social responsibilities. It suggests 'that we be more thoughtful about and more sensitive to the particular moral issues in our lives'.⁴⁷ We are reminded that we owe both to ourselves and to others *qua persons* to take a responsibility for our social lives that goes beyond blind obedience and that the latter is unacceptable even in the case we had political obligation. That 'citizenship does not free a man from the burdens of moral reasoning'.⁴⁸ And because in practice we are used to acting as if the directives of political authorities are beyond question, despite the fact that our times recognise that all relationships of authority need justification, '[i]t is this widespread habit of compliance that the philosophical anarchist is trying to subvert'.⁴⁹

Correspondingly, the anarchist perspective and its accompanying ideals of legitimacy insist on the evaluative role of a set of generally acceptable moral standards and thus function as a principled reflection of the seriousness and

⁴⁶Simmons 1979, p.200.

⁴⁷Simmons 1993, p.269.

⁴⁸Simmons 1979, p.200.

⁴⁹Miller 1984, p.18.

the implications of an attempt to justify political authority. In this, the anarchist position becomes a suitable standpoint for the political theorist and for the larger population to adopt in order to conceive and apply adequately political ideals in an attempt to construct proper forms of social organisation. It thus constitutes a strong basis for a deeper understanding and improved conception of our social relationships and lives. On the whole, as philosophical anarchists themselves claim, the anarchist scepticism challenges social order 'from within', it forces us to reassess the moral status and significance of social order and 'makes a difference to the nature of social relations'.⁵⁰

Yet, critical philosophical anarchists claim also that a widespread adoption of such an attitude does not challenge the existence of political institutions and does not necessarily lead to a significant change of our existing social reality at the practical level. These positions relate to a list of arguments which these anarchists employ against the accusation that their position leads to an extreme and invariable radicalism and entails disorder.⁵¹ As Simmons claims, the view that there is no political obligation does 'not entail that disorder or revolution is justified'.⁵² And he advances his claim on the basis of mainly three lines of argument: first, that to be a correct position, critical philosophical anarchism should also be 'weak' and adopt a 'balance-of-reasons' approach concerning the weight of 'judgments of state illegitimacy'.⁵³ Second, that there are various classes of moral reasons that individuals may have for complying with the law even in the absence of political obligations.⁵⁴ Third, that political obligation is only one aspect of justification of political institutions and the kind of evaluation properly involved in it does not replace the kinds of evaluation involved in other justifications of them.⁵⁵ These arguments interact with each other.

According to the first argument, philosophical anarchism should be seen as giving to its conclusion against state legitimacy a 'minimum content',

⁵⁰Green 1988, pp.254-255.

⁵¹For such accusations, see, Senor 1987; Klosko 1994, pp.269-270.

⁵²1979, p.200.

⁵³Simmons 1996, pp.23-27.

⁵⁴Simmons 1979, chapter VIII; 1987, pp.275-279; 1993, pp.261-269; 1996, pp.28-32.

⁵⁵Simmons 1979, chapter VIII; 1996, pp.26-27; 1999.

namely that ‘the subjects of illegitimate states have no political obligations’.⁵⁶ This conclusion does not extend to a claim that either these subjects or people generally have an obligation to oppose and eliminate the state, although defenders of weak anarchism may hold such a view on independent grounds.⁵⁷ Thus the anarchist conclusion of the debate on political obligation ‘does not translate into any immediate requirement of opposition to illegitimate states’.⁵⁸ In addition, the judgement that there is no political obligation is not held to provide final reasons for action, which outweigh all other moral considerations, but rather to present the relevant rights and obligations within a ‘balance-of-reasons’ approach, to be examined in view of other good reasons.⁵⁹ On balance there may be good moral reasons for not opposing the state even if it is illegitimate.

Accordingly, as Simmons’ second argument goes, there are three classes of such reasons. There are moral duties to others qua persons, such as duties not to harm others which cover acts which are *malum in se* and ‘wrongs of coordination’.⁶⁰ In the cases where political institutions prohibit these kinds of wrongs their laws overlap with morality and thus citizens are morally required to obey them. Also, if persons have a natural right to enforce these duties on others, then governments themselves (as ‘sets of persons’) must have the same natural right even if the absence of political obligation deprives them from a civil one.⁶¹ Furthermore, we have a ‘natural duty of justice’ to support institutions that exhibit certain qualities such as being benevolent or promoting happiness.⁶² Such merits relate to ‘dimensions of ‘justice’’ which might counterbalance a government’s ‘coercion without right’ and thus constitute

⁵⁶Simmons 1996, p.22.

⁵⁷Ibid.

⁵⁸Ibid. p.23. This feature is also usually seen to be what differentiates philosophical anarchism from political anarchism.

⁵⁹Ibid. pp.23-25.

⁶⁰Simmons 1987, p.276. The latter are not wrong in themselves but they become morally forbidden within contexts which make them harmful (e.g., when we endanger others by driving on the left in a society where the common practice is to drive on the right: *ibid.*; 1993, p.262).

⁶¹Simmons 1987, p.276. In this case coercion arises as part of a non-political context and it is not seen to be an exclusive function of government as such. On the whole, the arguments of this paragraph can be understood better within the context of Lockean political philosophy and its account of natural rights and duties, to which Simmons adheres (*ibid.*; Simmons 1993, esp. section 8.4.). The present argument in particular derives from Locke’s doctrine of the natural right to punish (Locke 1690, Second Treatise, section 13).

⁶²Simmons 1987, p.277.

grounds which provide government action with justification even where it functions without right.⁶³ Finally, there are weighty moral reasons for acting that do not have the status of duties but yet play a role in determining our judgments about action, for example when we are to inconvenience others or disturb their plans with our disobedience just because we are entitled to disobey.⁶⁴ Thus, Simmons concludes, the lack of political obligation does not entail that the state's right to command and be obeyed disappears for every particular case, nor that illegitimate states always act without justification in particular cases, nor further that we have a conclusive right to disrupt their functioning and oppose their laws.⁶⁵ All the reasons just discussed limit instances of disobedience and encourage support even though the proof of no general political obligation shows that governmental action for preventing harmless private conduct, laws enforcing conduct that serves the protection of the state and those imposing payments which finance government operations concern areas where the state is not entitled to require our support.⁶⁶

These considerations bring us to the third argument provided by Simmons.⁶⁷ Simmons claims that political obligation concerns only one area of justification of political institutions, namely their right to rule and its correlative obligations. And that this needs to be assessed in terms of a particular relationship created on the basis of significant elements of specific interaction between governments and each of their citizens. My thesis attempts to bring to light the importance of such transactional evaluations for the problem of political obligation and the anarchist position in it. For one thing, they help avoid the derivation of political obligation from evaluations of political institutions which might cover for different claims about justification. For Simmons, the distinction between different areas of justification itself is of great importance. As he argues, the state may be defended for having a right to exist, which refers to a kind of justification other than state legitimacy (qua obligation) and which can be used to support the state independently of and despite the conclusions concerning its legitimacy. In this context, considerations

⁶³Ibid. pp.277-278.

⁶⁴Ibid. p.278.

⁶⁵Simmons 1996, pp.24-25.

⁶⁶Simmons 1993, pp.264-268.

⁶⁷For the following presentation of this argument, see Simmons 1999.

about the general virtues of institutions play a primary role and constitute the ones referred to as generic evaluations. I will argue that such evaluations can be seen to play a role within the problem of political obligation but not to be primary and sufficient to generate this special political relationship. Also I will show how, given the implications of the problem of political obligation for further justifications of institutions which the anarchist criticism stresses, these evaluations can be reintroduced in the political debate and be useful.

At this point, considerations about general qualities and accomplishments of institutions can be seen as the elements which justify the general moral duties for complying with political institutions discussed in the preceding paragraphs. And they become in the hands of the anarchist theorist reasons for showing that the anarchist perspective does not dictate widespread disobedience and retains its critical value within a context that carefully separates various moral assessments and allows evaluation to take multiple directions and create various avenues of support. Importantly so, critical philosophical anarchists can use these reasons to distinguish good from bad governments, against the accusation that their view implies that all illegitimate states are morally equal and should be treated in the same ways.⁶⁸ Another ‘dimension[.] of evaluation’ which is distinguished in this context is that states may sometimes ‘*act with justification*’, namely have particular actions or policies of them justified on moral grounds, even when they are neither justified to exist nor legitimated to rule.⁶⁹ The separation of at least three dimensions of evaluation of political institutions corresponds to the different classes of moral reasons for complying with them and functions according to the rationale of ‘weak’ anarchism and a ‘balance-of-reasons’ approach. It is the combination of these aspects, which allows for great flexibility in the political debate, that certain critical philosophical anarchists think characterises the anarchist perspective and which they offer in defence of their claim that their view does not have dramatically counterintuitive implications.

⁶⁸See Simmons 1979, pp.196-199; 1993, pp.260-269; 1996, pp.26-27.

⁶⁹Simmons 1999, p.770, emphasis mine. For example, a thoroughly inegalitarian government is justified in prohibiting murder even though it is neither virtuous to merit support nor does it have a right to direct and coerce us.

However, I think that we need to examine the resulting anarchist position more carefully. Simmons is right to claim that the anarchist conclusion about political obligation provides reasons for action which can be overridden in light of other serious moral considerations. And I concede that the lack of political obligation does not directly challenge the existence of institutions, given the independent function of generic evaluations of them and the indispensable moral force of such evaluations. Also, I find the idea that philosophical anarchism does not entail widespread disobedience and chaos a legitimate conclusion of these arguments and one compatible with my support of the positive contribution of critical philosophical anarchism in this thesis. The title of Simmons's book *On the Edge of Anarchy* has the positive meaning that this is exactly where we should be, that anarchism is not something we have to escape, that the edge of anarchy is not the verge of chaos. And it is on this idea that his work concludes. Yet, I find this conclusion compatible with a radicalism that is central in the contribution of philosophical anarchism and which Simmons' line of argument seems to neglect. The distinctive role of the anarchist is not to distinguish good from bad governments, nor merely to put limits to political institutions. Its edge lies somewhere else and this is what I argue below.

To support my view, I begin with an estimation of specific claims made by Simmons in relation to the preceding account. Then I will follow this estimation with an account of my more comprehensive departure from his position.

1.4.2.ii. Specific arguments against Simmons.

Simmons concludes his book *On the Edge of Anarchy* with an account of the wrongs done to us by illegitimate yet benevolent states, given the non-existence of any special political obligation, and derives his Lockean, anarchist conclusions about the position individuals should take with regard to this phenomenon.⁷⁰ At one point he confirms that ‘...most of us in the “free world” are in Lockean terms just persons in the state of nature (simpliciter), subjected by our governments to a variety of (usually) relatively minor, but

⁷⁰1993, pp.264-269.

frighteningly regular, wrongful acts and policies',⁷¹ and this explains why '[g]ood governments might merit our support, but *they are not entitled to require it* (without our free consent)'.⁷² Later he suggests that certain 'moral facts [that oblige us independently of any special legal requirement to obey, facts as those discussed above], plus considerations of simple prudence (i.e., our interest in avoiding legal punishment), seem to dictate that moderately good governments, *which violate our rights only in ways such governments typically do, ought not to be resisted in ways that threaten to destroy them or to replace them with distinctly inferior alternatives*'.⁷³ And he concludes that '[i]n the world of illegitimate states that will continue, moral persons must cast off their childhood lessons in good citizenship, and proceed *by selectively supporting or opposing their governments' actions and policies solely according to the particular moral standing of each governmental move*'.⁷⁴ These points represent the critical philosophical anarchist position, which comes out of the debate on political obligation with the message that we should adopt a more critical attitude towards existing governments, an attitude, however, which does not involve rejecting them altogether but focuses rather on the quality of their particular functions.

Yet Simmons is missing something. First, his account of our moral obligations is determined by his advocacy of Locke's philosophy, which is not a view that someone, including an anarchist, has to be committed to. But even if his idea of moral responsibilities is an acceptable one, the problem with his approach still remains. With his first claim cited above he dismisses as minor, wrongs done to us by governments which are, nevertheless, *frighteningly regular*. And he supplements this claim with his further suggestion that good governments which *violate our rights in ways that such governments typically do*, should not be dangerously resisted. But these statements constitute a very incomplete representation of the anarchist criticism which proceeded them and its results. And this is obvious in the very form that they take: how can a politically informed and active person, or just a reasonable one, not to mention

⁷¹Ibid. p.266 (emphasis mine).

⁷²Ibid. p.265 (emphasis mine).

⁷³Ibid. p.268 (emphasis mine).

⁷⁴Ibid. p.269 (emphasis mine).

an anarchist, consider as minor violations acts and policies that are at the expense of the individuals concerned in a frighteningly regular manner? What is the habit of compliance if not such an untroubled acceptance of continual violations? And how can a critical approach to political institutions concede to their violations being seen as those typically committed by such institutions? Isn't this an unquestioning concession to the existing status quo rather than a challenge to it, as misguided as the romanticising view of the state? Simmons' relevant appeal to prudence and to the dangers of possible destruction of good illegitimate governments and their replacement by inferior alternatives is a moderate concession concealed by an air of political realism rather than a reasonable pragmatic realisation. Furthermore, these claims contradict with the concluding demand for a critical and selective approach to governments, based on the quality of their particular policies. Such an attitude involves much more reflection and scrutinisation, as well as abstraction from existing determinations, than the rush from the very beginning to make concessions to them involves.

On the whole, by dismissing the importance of certain facts about governments which the anarchist view brings to the fore, Simmons commits philosophical anarchism to a view much less radical than really entailed by the anarchist perspective. To be sure, to believe that for specific instances minor violations of rights are better than major ones and also that it is not bad to accept minor violations of rights is reasonable. But when these views are used as indications of an approach to the very problem with authority, they render a view which is incomplete and misleading. The problem lies in that from such a perspective they seem to suggest that it is fine if our relations to the state are descending a bit and that the whole issue is to establish a minimal state. Simmons' statements lead him to this approach.

1.4.2.iii.A more general departure from Simmons' approach.

My following arguments about the significance of the question of obligation and of the anarchist ideal of legitimacy as well as for a departure of the anarchist view from supports of the minimal state are meant to demonstrate where my approach differs fundamentally from Simmons' and where I find his approach to be more generally inadequate.

The significance of the question of political obligation.

When the anarchist says that we cannot ground the state on voluntariness, justice and reciprocity, he reveals a gap in the justifications of the state. This is his message derived from the debate on political obligation: we don't participate in creating and managing the state and there are no ethical concerns which arise distinctively from it as such. This makes the state illegitimate in terms of political obligation, although it is not a positive proof of its illegitimacy in general: we have no special ethical relationship to the state, although for it to be illegitimate, or wholly unjustified, we need to show that it does something wrong. Thus, Simmons thinks that this conclusion is perfectly compatible with keeping the state. That it encourages a critical outlook towards it and an independent approach to our obligations to others, but these nevertheless continue to be expressed within a framework widely determined by the state: the state can have the right to impose specific duties, it should be supported when it serves ethical duties and it can very well continue to exist in a justified manner (when it is a good rather than a bad government). This view stresses the importance of differences between evaluations of political institutions (between evaluations in terms of their existence, in terms of their legitimacy qua obligation and in terms of specific obligations that these institutions might be justified to impose even when they are neither justified nor obligatory) and the fact that political obligation is only one such evaluation. It is this latter that I challenge in my approach to critical philosophical anarchism. This thesis accepts that the difference between kinds of evaluation of the state matters and so, in this light, the state can exist even when there is no political obligation. Yet, although the separation between different kinds of evaluation is central in the anarchist perspective, its value does not lie in permitting different kinds of justification to proceed independently of one another. It rather lies in helping us see the force of the considerations provided for and against political institutions in each case by drawing attention to the elements which characterise primarily the considerations applying to each issue we want to examine.⁷⁵ This does not

⁷⁵For example, it reminds us to look for morally significant features of specific interaction as the elements relevant for generating the particular relationship characteristic of the problem of

mean that the different avenues of justification of political institutions do not affect each other considerably.

The result of the anarchist criticism is not that political obligation is just one evaluation among others with no distinctive effect on the justification of the state. I argue instead that by showing the state to provide no distinctive ethical concerns, to be based on no special relationship of political obligation, the anarchist uncovers a very serious gap in it: lacking political obligation is a defect in the very nature of the state. How can political institutions relate to their subjects if they lack political obligation? And how can they function and be distinguished from their alternatives if they lack such a relationship? That is, how can they be seen as coercive and exclusive if they have no right to command and be obeyed? These questions lead to more general doubts about political institutions. They make us examine their very nature and discover defects in it that have been neglected. The coercion which makes political institutions efficient is also *a problem*, and this needs to be addressed. It is at this point that the romanticised view of state-order starts to look out of place. In this way, the challenge to political obligation is not just a restricted and harmless criticism of the state but a viewpoint from which the state is seen as a defect (even if not as totally evil) and *something difficult to justify*.

Political obligation cannot be derived simply from arguments for the existence of political institutions and the latter might survive the debate on political obligation. Yet, it will be also explained that the character of institutions is a relevant and important condition for finally validating the right to rule⁷⁶ and that the considerations and results of the debate on political obligation affect crucially further defences of political constraints. The particular and actual relationships required for political obligation to exist are not indispensable elements for deciding the moral value of institutions more generally, but the absence of such an obligation constitutes a serious gap in

political obligation instead of trying to derive argumentative force from general qualities of institutions, which play a secondary role in creating such a relationship.

⁷⁶It is not likely that morally unacceptable (e.g. extremely bad) governments would allow their right to rule to be valid even if the required specific transactions could apply to them. As will be shown throughout this thesis, quality is still relevant in the debate on political obligation.

their status.⁷⁷ And, more importantly, the difficulty with proving political obligation which the anarchist criticism reveals, redirects the debate to the deeper concerns that need to determine our approach to political institutions. I argue that the anarchist position to the problem of political obligation exhumes a more fundamental question which underlies every approach to political institutions. That the perspective which every theorist needs to adopt is one characterised by the question of *whether political institutions should exist at all*. The anarchist indication that political obligation cannot be established by appeal to general merits of institutions and that the basis required for it makes it a matter of continual justification, leads to a wider consideration about whether appeal to general virtues is enough to motivate constraints and whether it motivates them once and for all. It is stressed in the argument of this thesis that for such evaluations to be effective they need to apply within the background set by the fundamental question that the anarchist brings to the fore and that such a question makes the demand for justification constant. This clarifies the complexity of avenues towards a defence of political institutions, it indicates what the proper way of using their merits to support them is and how difficult this may be. In the light of the debate on political obligation and its results as effected by the anarchist criticism, then, every attempt to justification is reformulated and the task of justification becomes harder.

This way, we can claim that *indirectly* the justification of political obligation has a significant effect on other dimensions of justification of political institutions and thus on their overall justification. Ultimately, the outlook of every theorist and every person is determined by the demand that rather than considering the merits of political institutions on the basis of an assumption that we need them and desire them we start to ask whether we should need them at all and appeal to their merits in the light of this question. This is the anarchist perspective, and the way it is activated within the debate on political obligation makes that problem, if not decisive for the content of other kinds of defence, still totally decisive for their structure and

⁷⁷The different view to our position in society which the anarchist subversive campaign creates with its removal of the presumption in favour of political obligation constitutes a serious change for social life in the presence of political institutions. But further, the absence of this central relationship which characterises their status as political raises doubts about the very plausibility of their validity, function and viability.

force - decisive in the way it leads to a proper reformulation of the considerations applying to them and a correspondingly different estimation of their input. The critical approach and a careful weighing of the independent moral grounds that bear on action in different political circumstances which the philosophical anarchist recommends should be seen in this light.

On the whole, we can see a parallel between the position which the anarchist establishes within the debate on political obligation and the one advanced more generally with regard to political institutions. The removal of a presumption in favour of obedience involved in the subversive campaign of philosophical anarchism corresponds to a removal, through the fundamental question that the anarchist perspective raises, of a presumption in favour of the existence of political institutions. The fundamental concern becomes the very possibility of political obligation, or, the very possibility of political institutions. And the different outlook to our position in political society forced upon us as the practical stance maintained by the subversive campaign of philosophical anarchism within the debate on political obligation corresponds to a different outlook with regard to the status and stability of political institutions, again through the fundamental question that the anarchist criticism exhumes and the demand for justification that this raises. Their existence is not taken for granted and their desirability becomes a matter of constant justification.

So, although the anarchist position does not render the results of one specific avenue of justification to overthrow all the other avenues, it nevertheless reintroduces an approach which constitutes a unified challenge to all of them at the deepest level. Even if not obvious to its advocates, the perspective of critical philosophical anarchism carries with it and remains faithful to the traditional position of anarchism that there is “nothing lovable” about external constraints and that *the state remains a problem*. It is in this respect that philosophical anarchism remains thoroughly radical. The claims that it challenges social order from within⁷⁸ and that it helps us press for the respect of self-government within social life⁷⁹ should be seen in this new light.

⁷⁸Green 1988, pp.254-255.

⁷⁹In the criticism of Raz above I stressed the importance of voluntary choice in securing freedom within political society. In the hands of anarchism the force of consent is expressed in a negative form: we couldn't possibly agree on having a state; if we were given the

Correspondingly, by making the demand for justification harder,⁸⁰ the anarchist position makes the various expressions of the critical approach it recommends,⁸¹ even if not vehicles of an immediate and radical change, surely more obviously representative of a serious challenge to actual societies and more effective as indications of active citizenship. More precisely, the demand to show in every instance that the arising political constraints respect the values they are held to help secure creates a central role in the political debate for the task assigned to individuals of thinking carefully about the relevant moral reasons for support or rejection. In this sense critical philosophical anarchism has a much stronger link with the political anarchist criticism of the state as an evil than first thought. Horton is right to claim that the challenge to political obligation can change much in our political lives, since a central part of our view of the political world is shown to be a myth. In the end we have moral reasons to be more independent in our reasoning about social behaviour and also to develop non-political forms of solution to social problems, or, at least, to understand their intuitiveness (to see that they are motivated). Yet this view does not adopt the political anarchist demand for the removal of the state. Not as the initial and primary anarchist goal anyway. But then, what does it help change?

The anarchist does not provide an effective yet spread criticism concerning different variables, which makes no strong overall impact. Rather, the anarchist criticism reflects a unified demand on justification which affects our perspective on political institutions. And it is not the case, as some philosophical anarchists claim, that the anarchist position within the debate on

possibility to agree on it we would not (for more on anarchism and consent, see chapter two). But I agree with Raz that it is wrong to believe that political societies can become voluntary associations. Simmons is wrong to believe this (see 1993, p.268). It is because they cannot become such associations that the anarchist opposes them and sees them as destructive to proper relations. In light of this problem we need to find another way of asserting self-government and legitimacy within political societies. The anarchist perspective and ideal of legitimacy work in this direction.

⁸⁰See chapter five, especially my explanation of the way the anarchist perspective makes the demand for justification continual and of the role of the anarchist ideal of legitimacy in further justifications of constraints.

⁸¹For example, 'Even if we find that we can seldom justify or forbear the consequences of disobedience or substantial opposition, we can at least lobby for the elimination of those laws that interfere with harmless choices, impose needless regimentation of behavior and lifestyle, limit personal liberty without securing important social benefits. ... [We can ask] questions about the moral merits or defects of the individual laws, actions, or policies of our governments' (Simmons 1993, p.269).

political obligation and the attitude it recommends will not change much in practical terms. On the contrary, this position and attitude reflect a significant implication of the anarchist outlook with regard to real institutions and our lives in relation to them: a gradual but stable effort to make substantial *actual* changes. By rendering a principled support of the nature of state authority problematic, the anarchist position keeps the debate on political obligation vivid, on the basis of what makes it worthy; it presses for the exercise of our critical powers; it allows the construction of improved accounts of the authority of the state and of more satisfactory political arrangements and it imposes more demanding criteria on wider evaluations of constraints; also it renders a picture of the political which founds an innovating conception of our political relationships and which inspires more informed views about the role of public institutions. These aspects suggest substantial changes to our conception of the political and to our political lives, which might neither be based on an instant reconstruction through revolution nor be a desperate expression of our dissatisfaction with authority and the present character of public life.

Anarchism becomes a reminder that our times should actually recognise and apply what they are more qualified and appear to recognise, to wit, that all relations of authority are in need of justification and that the proper approach to political authority is one which sees its scope to be limited on the basis of considerations of quality. This is the way in which the anarchist critique helps remove the habit of compliance. But, more importantly, the anarchist position remains consistent. Its fundamental concern is still not to establish limits on political coercion. It rather remains the claim that coercion is always problematic. All this involves a proposal which is as radical as it is valuable: it testifies that anarchism suggests and remains the continual source of a move towards *a fundamental reconstruction of our social relationships and lives*. The possibility of such a reconstruction is still to be proved and its realisation is necessarily gradual. Yet, it remains a desirable end and an alternative worthy to take its place in our moral and political history.

Departing from the minimal state.

But, how does the anarchist perspective and its accompanying ideal of legitimacy *differ* from already existing views for and against political institutions?

The anarchist message is that we don't have a comprehensive argument for political obligation. Also, that there are good reasons why we cannot have such an argument. This is a way of *understanding* the gap in justification instead of trying to fill it: it prepares a perspective for, rather than a ground for, obligation. Beginning from the gap created from the absence of political obligation, critical philosophical anarchism suggests that we leave aside the attempt to answer the question of obligation. That political obligation concerns an everlasting effort of justification which is not susceptible to a final resolution. And the anarchist scepticism is not about providing such a justification for the state. Rather it is bracketing the question of obligation and concentrates on something else, which is nevertheless motivated by the difficulty of this question. Instead of attacking the existence of the state and trying to roll it back, the critical philosophical anarchist claims that, whether we love it or not, when we have it the state is not a matter of magnitude, or, quantity, but rather of *quality*: to be critical towards the state in the way that the philosophical anarchist suggests means to see whether it matches ethical concerns that we need, whether, that is, as it exists, it is acceptable in view of justifiable claims we have towards one another. I call this 'the quality thesis' on the state.

Such an approach departs both from romanticising accounts of the state and from those against the welfare state. With regard to the latter it is important to see how the anarchist approach differs from defences of the minimal state. In contrast with what Simmons' account suggests, for the critical philosophical anarchist there is no way of filling the gap which the lack of voluntary participation creates by diminishing the tasks of the state to the minimal. A state which does not support education and health-care and does not provide distribution and general protection, but is just policing property, is more unjustifiable than a full state. Such a state is even further from a condition of liberty without inequality which all forms of anarchism desire: instead of being an establishment which protects individuals without

undermining their equal right to self-government and participation, it gives liberty to the few, whose interests it protects and perpetuates, at the expense of the rest, who remain unsatisfied and unequal. It cultivates division and conflict by supporting a society where competition and social difference thrive and thus in fact it is very far from what is supposed to be the primary function of the state and for which it is claimed to deserve justification in the first place, namely to serve its citizens.

The perspective on the state which the anarchist adopts is guided by the anarchist *ideal of legitimacy*. In its different forms this ideal represents what a society characterised by appropriate relations between persons would be like. And because the state is not such a society, namely it is not the ideal, as the anarchist criticism of political obligation shows, what it can do instead is to prove in every instance that its functions are compatible with the moral criteria of the ideal (to approximate it). This does not mean that it proves to have political obligation but rather that, in the lack of it, this is the only way of ensuring active participation; not in the making of the state but in the process of evaluating its functions and in being able to restrict it to what it can justifiably demand from us.

This is what results from the evaluation in terms of political obligation and what makes that evaluation more important than Simmons thinks, namely not merely one among other evaluations which is moderate and limited but rather the basis for a substantive transformation of our view of the state. It shows that the state has gone too far and is taking too much from us, that it offends self-government and proper relations in the name of a good that it is not. But instead of either overthrowing it or trying to fill the (unbridgeable) gap of justification that its defenders attempted, we can become those who determine in a justifiable way where and how it should stop: when its functions are of a character that is justifiable to us and not at our expense, when by protecting through coercion it does not overdo the latter at the expense of the former. The perspective the philosophical anarchist offers shows us a way of being entirely diffident of the state while at the same time accepting the welfare state. This view does not depart from my claim that critical philosophical anarchism is still linked with political anarchism: at every instance there is the possibility of becoming dissatisfied with the state in terms

of the ideal of legitimacy and this endangers its existence. In light of the results of the debate on political obligation which the anarchist brings to the fore, the undesirability of illegitimate constraints becomes categorical and the ideal becomes a constant guardian against discrepancies of the state, not by providing a form of consent but by testing continually the quality of its functions. The anarchist thus reminds us that the dissatisfaction and lack of patience which we feel towards the state at times of crisis should be the characteristic attitude and the starting point of our viewing our social responsibilities. This is the way for the state to be an instrument in our service, compatible with individual self-government and positive participation.

1.5.Conclusion.

We then have to be committed neither to an inevitable acceptance of the state nor to a complete rejection of it. The anarchist approach offers an option which has been neglected and which is *the most reasonable*: we can stay within the state and participate in advancing the social aims it is meant to serve and yet always keep an eye on the way its coercion might overstep its initial task.

But having adopted this view, the philosophical anarchist has further to answer the question of how we fulfil our obligations to others without the state within a background where the state exists. How do we do without the state apparatus in a situation where we don't have perfect abundance? That is, how do we manage independently of the state to co-ordinate and co-operate towards an effective and fair satisfaction of our needs in a world where goods are not abundantly available? This is a legitimate question to ask the anarchist who does not insist on removing the state and yet finds its defects in terms of illegitimacy to be a good reason for independence from it. He has to answer this question in order to prove that he remains an anarchist and can convince others for the merits of his position. I will deal with this issue in the conclusion of the thesis.

In the rest of the dissertation, I elaborate on the arguments presented in this chapter: I examine in detail how the anarchist raises the problem about

political institutions and how the distinctive contribution of critical philosophical anarchism works. In the following three chapters I examine the anarchist position within the debate on political obligation in order to demonstrate that it is correct. In the final two chapters, and in view of the implications of the debate on political obligation, I demonstrate the value of critical philosophical anarchism towards the problem of political authority as it arises from that debate.

Chapter Two. The Limits of Voluntarism.

Social Contract and Consent theories are the most familiar and, perhaps, attractive accounts of political obligation. Such accounts centre on a *voluntarist interpretation* of political obligation, which places a premium on the free decisions and choices of individuals. For this reason, they are discussed here under the title Voluntarism. However, as it will be seen in this chapter, these theories differ in the degree to which they deserve this characterisation in virtue of the kinds of decisions and choices that they require of individuals in order to justify political obligation.

Voluntarism, or the belief in the normative significance of the choices, decisions or agreement of individuals, is highly valued by both anarchists and many defenders of political institutions. Even oppressive rulers care to claim that their rule is compatible with the will of their subjects. Contractualists have placed consent in the centre of their defence of political authority. What is appealing about consent? *Why* does agreement matter?

Consider the following example: a woman tells her partner that some time ago she made a big decision about their relationship which involves certain new conditions and which she thought would be the best for both of them. She didn't say anything to her partner because she thought that if they continued to live as they did and she carried out this decision for both of them without him knowing, he could continue his plans and would have the matter sorted out for him without being frustrated. Thus, her behaviour has been overall good for him. The man gets very upset. His main complaint is that however beneficial her attitude might have been for him, he still wanted to know about something so important that affected him and to be able to have a say on it; to participate in the solution of the problem, to think, decide and agree by himself. The complaint of the man seems justified. What is appealing about it? There is a basic form of freedom about which we care the most. We care a lot about living our own life. About being able to make our own decisions concerning who to be, how to live and what to value and achieve. There is a big difference felt between letting others impose constraints on us and deciding about the matter ourselves. That we can and

do decide to put constraints on ourselves changes significantly their status and application. Although it is believed that there are ways other than consent through which freedom can be realised, the aim of this chapter is to show how consent remains a primary route to this end, despite its failure to ground political obligation. For this, an understanding of the basic freedom at issue is necessary and I will attempt to provide it in this chapter.

This chapter is constructed on the basis of two underlying leading considerations.

(a) The questions to be addressed *differ in character*: questions such as ‘what are the proper signs of consent?’ or ‘is consent possible?’ are factual in character although with significant normative implications. They concern primarily the realisation and proper applications of consent. Questions such as ‘what are the conditions for regarding consent valid?’ or ‘is consent valid even when given?’ are directly normative ones. They are asked in an attempt to establish the normative relevance and significance of consent in order for it to be used as a ground of social relations and practices. It will become obvious that different contractualist arguments address different questions or sets of questions - some addressing all of them, others only some of them. This will affect the role each contractualist view plays in the present endeavour.

(b) There are distinct kinds of consent. The main distinction is between *actual* (explicit or tacit) and *hypothetical* consent. Further, hypothetical consent itself takes different forms.¹ Some forms of consent more naturally give rise to coherent voluntarist theories.

Also, versions of contractualism differ from one another. For example, while in Locke’s theory of social contract we find in his explicit consent a version of actual consent,² others are closer to hypothetical consent views. Thus, as I will argue later in this chapter, Hobbes’ contractualism is based on a hypothetical consent argument. And my arguments with respect to Rawls, in

¹All these forms of consent appear already in the work of traditional contractualists such as Hobbes, Locke, Rousseau and Kant and are almost commonplace among contemporary political theorists.

²Also, in his appeal to ‘tacit consent’, Locke aspires to promote it to actuality, since, as we will see in discussion of this notion of consent below, he considers the acts which he calls ‘signs of consent’ to be legitimate inferences of consent, having the status of genuine consent.

Chapter Three, show that his appeal both to concerns of rationality (of a Hobbesian character) and to concerns of fairness (of a Rousseauian-Kantian character) is reflected in his adoption of a hypothetical contract view. Most importantly, it will become obvious that the rationale of actual consent differs from the rationale of hypothetical consent.

Thus there are different types of contractualist reasoning: the voluntarist accounts to be examined here *differ in nature* and the distinctions between them reflect the *different difficulties* that these theories face with respect to the *same* general problem. That is, the problem to prove the possibility of agreement or of some other morally acceptable way of reflecting voluntary engagement, as an expression of an ample characterisation of why and how agreement matters. Therefore, my criticisms will not be directed towards the theory of any particular philosopher, but rather will be developed in light of these variations. These criticisms are the first step towards a defence of the critical philosophical anarchist position within the debate on political obligation.

2.1. An anarchist criticism of voluntarist theories of political obligation.

The historical roots³ of voluntarism and the individualist account of persons as free and equal rational beings characteristic to it explain the centrality within voluntarism of the notion of 'obligation' and its source in the voluntary undertakings of individuals. The focus of the present study is this *centrality* itself. That is to say, it is the insistence on the importance of developing a voluntarist account of political obligation consistent with the active dimension of obligations - in contrast to the passivity of obedience - which is to be examined.

As explained in the Introduction, all theories of political obligation should provide a *moral ground* for a special kind of obligation, namely the

³There is an extensive literature concerning the prominence of voluntarist theories of the state during the seventeenth century and its connection with the ideological and economic consequences of the Reformation and the rise of Capitalism. See, for example, Skinner 1978. Also, these are the theories which helped to define the Liberal Democratic form of society (for example, see Pateman 1985, chapter one).

political. For this, their moral ground should meet the conditions of political obligation, that is: ‘generality’, ‘particularity’, ‘bindingness’ and ‘content-independence’ as involved in the nature of the ‘political’.⁴ Voluntarist theories attempt to meet these conditions by appeal to the voluntary undertakings of individuals. They should thus show that this type of act is both possible and of a sort appropriate to their demands. This sort of endeavour has created the most fundamental difficulties for these theories: both contract and consent theories are criticised for their failure to provide, in a sufficiently generalised form, an actual and effective analogue in the political sphere of the type of commitment they take to be a necessary and sufficient ground of the obligations in question.

The arguments to follow show that *the possibility of agreement* is ungrounded: either consent is not given or it is given in a way that perverts its voluntarist and intentional nature. This constitutes the central problem for voluntarism. For its core element fails if it is not shown to be extensively realisable and this in a way such that it preserves the core intuition of the theory - that is, the desirability of meaningful individual authorisation. The problem of agreement involves both factual questions, concerning the existence of consent, and normative ones, regarding its validity and bindingness - each kind affecting voluntarism in a particular way.

2.1.1. Actual Consent.

I begin with theories based on *actual* consent. These include views based on the notion of ‘explicit’ consent and those based on the notion of ‘tacit’ consent. In what follows each view is discussed in turn.

The existence of actual consent would directly reflect the required act of commitment in the political world. It finds its most promising definition in terms of *explicit* consent. Voluntarist theories of political obligation would establish their success if they could demonstrate conclusively the possibility of

⁴See introduction, section 1. Generality requires that political obligation applies to *most* of the individuals in a society governed by the state. Particularity requires that individuals are obligated to the *particular* government of their *own* country of residence. Bindingness and content-independence mean that the law is authoritative as such and to be obeyed *in the way it requires to be obeyed*. Together these conditions express the distinctive nature of the political.

a widespread form of explicit consent. I take such a consent to be either 'historical', namely the original consent of the first members of a political organisation, or 'personal', namely the consent given by each citizen individually.⁵ Explicit consent, so defined, would satisfy the basic conditions of free choice and commitment. These conditions are: that there is intentional and voluntary decision and choice over the content (and, hence, implications) of the commitment in question, under circumstances of unimpaired knowledge and rationality; that all this is also communicated as an object of public assessment.⁶ The following considerations display the difficulties with establishing the possibility of explicit consent, first, in a historical and, second, in a personal form.

The obvious problem with any account which may appeal to an 'original' consent is that it has hardly been a historical reality: there is rare historical evidence for it and no convincing reason to accept its possibility around the world. Still, even if it had existed once, it would later constantly require the consent of future generations. Such a requirement generates two worries. First, the problem of agreement,⁷ reflected in the risk of a refusal by next generations to undertake the required commitment. Second, the question whether the form of self-assumed duty constituted by such a commitment can be accepted as the right form of voluntary undertaking. Political consent provides only one understanding of 'self-assumed obligation' - namely, as an 'authorization' to someone else's acting on one's own behalf, as acceptance of 'an already existing relationship of obligation' - and probably not the most appropriate one to capture this notion.⁸ This understanding defines a passive

⁵This is a distinction used by Simmons 1979, pp. 60-61, 71-74.

⁶For these conditions, see, Rousseau 1762; Horton 1992, p. 28; Pateman 1985 p.13; Simmons 1979, p.77. The central idea is, in Raz's words, that 'the core notion of voluntary obligations is the knowing undertaking of an obligation' (Raz 1979a, p.95).

⁷This problem is realised by traditional contractualists, not only in their recognition of the difficulty of establishing the original contract, but also in their appeal to future consent as a necessary stage following the initial contract, since it would be a proper form of authorisation.

⁸See Pateman 1985, p.21. It could be contested that this understanding is better described under the notion of 'consensus' rather than 'consent'. For example, Green is in agreement with P. H. Partridge when he refers to the latter's refusal to join other theorists in an uncritical consideration of a 'permission given deliberately in advance, with or without subsequent approval of the permitted action', and various other examples of 'political and social conforming behaviour', as original examples of consent (Green 1988, p.159). However, what matters here is that the 'permission' of future generations to which contractualists appeal

acceptance of a relationship determined and characterised by someone else and hence of whatever is authorised by them. And it differs from the conception of self-assumed obligation as 'the free creation of a [new] relationship'.⁹ This latter involves a relationship initiated by individuals themselves and determined in content by their own autonomous judgements. It is the conception exemplified in the practice of promising and, in fact, it is the model of what would make the case for voluntarism in the political sphere. The political correlate of this notion is the objective of a consistent voluntarism and it is this that voluntarism cannot provide. When the voluntarist character of the notion of consent is thus questioned, its implementation by further generations becomes even more controversial: apart from the difficulty with acquiring their agreement, the character of this agreement itself becomes problematic. On the whole, historical consent has more of a rhetorical function. All consent and its value is based rather on personal consent.

In the case of personal consent, the impossibility of its general realisation, which is in fact determinative of the difficulty of establishing historical consent, is more obvious. Almost none of us has ever given such consent and we rarely find the opportunity today to give it to the governments of the societies we inhabit. The conditions of living of the populations of democratic governments, the size of modern cities and other external circumstances, make it impossible for their citizens to commit themselves individually. Also, ethnic, class and sexual differences and the discriminations accompanying them, along with the controversial status of voting as a proper implementation of personal consent on a large scale,¹⁰ are substantial obstacles to such a possibility, especially because they affect the very validity of personal consent. Finally, the way even the most familiar sorts of democratic governments are organised makes it difficult to compare them to the forms of voluntary associations, the nature of which would render

is properly represented only by the contested understanding of self-assumed obligation; and we can submit without contradiction to the idea that this is better captured by the notion of consensus.

⁹Pateman 1985, p.21.

¹⁰The place of voting and of 'majority consent' in the theories in question will be considered in the discussion of tacit consent below.

practices similar to promising possible.¹¹ Importantly so, such schemes have little relevance to the structure and characteristics which make our societies political. The large-scaled, centralised, hierarchical, monopolistic and coercive character of the latter does not provide a background where close and directly informed relationships can flourish and it in fact generates the social difficulties just stated.¹² This is observed by various theorists, whether they be anarchists or not. All these obstacles become more difficult in light of an aspiration to understand personal consent to involve the appropriate form of self-assumed obligation distinguished in the previous paragraph, namely as free creation and determination of a new relationship.

The above considerations represent prominent philosophical anarchist criticisms of the voluntarists' appeal to explicit consent. They can all be summarised in the following assertion of Simmons: '...expressed consent is not a suitably general ground for political obligation. The paucity of express consentors is painfully apparent. Most of us have never been faced with a situation where express consent to a government's authority was even appropriate, let alone actually performed such an act'.¹³

2.1.2. Tacit consent.

The aforementioned difficulties with explicit consent contribute to the considerable appeal to voluntarists of the notion of *tacit* consent. Given the way it is used by the theories in question, my suggestion is that tacit consent is a hypothesised form of commitment meant to acquire, through an appropriate interpretation, the actual substance required in order to make it relevant to, and effective within, a voluntarist theory of political obligation.

¹¹For such schemes, see chapter four, section 4.3.2.

¹²For more on the relationships involved in voluntary associations, see chapter four. An additional observation to the ones above is that there are many people - anarchists and others - who do *not want* to consent to the authority of their governments, and thus would never give their personal consent even where possible.

¹³1979, p.79. This assertion reflects a failure to combine generality with particularity within a voluntarist account of political obligation (see introduction, section 1). The element which voluntarism offers is a very suitable instance of what would explain a relationship with our *own* government in terms of its own criteria, thus meeting (where it is actually given) the particularity condition of political obligation. But it fails to remain so to a sufficiently general extent, as the generality condition requires.

The importance of tacit consent lies in that a proper instance of it is not significantly different from explicit consent. The former differs from the latter in the 'special mode of its expression': it is either 'silent and inactive', or legitimately inferred from certain actions construed as 'signs of consent'.¹⁴ The problem then becomes one of discovering and establishing the proper instances of tacit consent, by proving the possibility and actuality of the legitimate modes of its expression, either in terms of *silence*, or in terms of *legitimate inference*.

In the case of silence, there are certain conditions to be met in addition to the ones posed on explicit consent (for the latter, see page 72). These further conditions include the demand for a precise definition of the time during which one can decide whether to consent or not and of the reactions which may be taken as indications of consent (for example, remaining present during the time of decision-making). These clarify the terms in which the communication desired can be achieved. Also the demand that reasonable means be used for the indication of consent and that the consequences of dissent be not too severe (for example, that no complicated physical acts are required to express consent and that no dismal punishment threatens potential objectors). These latter conditions are extremely important for the validity of consent, since complicated procedures and alternative choices with undesirable effects limit or even cancel the availability of options which makes consent free.¹⁵

Only passive attitudes meeting these conditions form instances of tacit consent. Relying on these conditions, however, provides no more than a basis for a case-by-case estimation. Such a procedure qualifies only for settlements at an empirical level, depends largely on contingencies and is sometimes very complex and impractical. Thus, it complicates the establishment of a valid act of authorisation because it does not represent a general normative guide of a theory of tacit consent in the political sphere.

In the case of legitimate inference, appeal to which is the most usual method of defending tacit consent, the need is for specification of certain acts

¹⁴Simmons 1979, p.80.

¹⁵For five conditions such as the ones discussed in this paragraph, see *ibid.* pp.80-83.

correctly regarded as implying consent. There is disagreement over the extent to which we should decide which acts qualify as signs of consent on the basis of 'conventional criteria', namely of conventional means for members of a society to commonly invoke as determinative of whether certain words or gestures are signs of consent (for example, whether a nod in a marriage ceremony is a way of saying 'I do').¹⁶ But the main issue here is normative. It affects whether the kinds of acts usually invoked do entail consent. And it is these very acts that, as the anarchists point out, do *not* seem to satisfy the conditions of validity given above - especially the basic normative conditions of knowledge, intentionality and choice. They are interpreted by the theorist in defiance of the normative demands and obligate persons in absence of their own permission.¹⁷

The failure of consent theorists to provide proper instances of tacit consent and to establish their validity, in order then to show their general application in existing polities, is demonstrated by the following discussion of three kinds of acts traditionally construed as signs of consent.

The first is residence. Appealing to residence creates perhaps the clearest ground for doubts. This is effectively criticised by Hume, in an argument of his from 'Of the Original Contract', where he compares remaining in one's own country with the situation of 'a man ... remaining in a vessel ... [within which] he was carried on board while asleep, and must leap into the ocean, and perish, the moment he leaves her'.¹⁸ This comparison describes residence when emigration as the corresponding alternative is both extremely difficult - especially under the conditions of the modern nation-states, let alone the varying financial and other material circumstances of different citizens - and painful. Thus, it shows that residence alone cannot be counted as consent, since it does not present itself against a real alternative which would make it a free choice.¹⁹ This should not be taken to mean that the impossibility of

¹⁶See, e.g., Green 1988, pp.166-173.

¹⁷For such a criticism, see Pateman 1985, p.16.

¹⁸Hume 1748, p.193.

¹⁹Green 1988, p.174. For similar points on tacit consent and residence in Locke and on the status of tacit consent in general, see Lloyd Thomas 1995, pp.38-40. Also see Wolff 1996, pp.46-48.

dissent makes it impossible to consent but rather that intentional consent through residence cannot be assumed.

In response, it has been objected²⁰ that emigration is not an unacceptable choice forced upon us, unless the only attitude available under residence is the acceptance of the authority of the state. But survival within a state does not necessarily require acknowledgement of its authority. The salient point here, however, is that these observations, although they might free residence from being a kind of invalidating duress, confirm rather than oppose the inappropriateness of it as a sign of consent to authority. Whether bearable or not, residence still cannot necessarily be assumed as evidence of such a consent. And, in the end, the real force of Hume's argument can be seen to lie in its revealing this point: even if valid intentional consent remains possible under residence, we cannot infer that residence is a voluntary decision nor can we infer a voluntary decision to acknowledge the state simply from it. Still, we may have underestimated Hume's position if we link it too closely to residence. For he is making a more general point which is crucial for discussions of political authority. I will return to this view in the end of my discussion of tacit consent.

At this point, we can see that consent theory is deprived of an element which would guarantee a high level of generality in a properly particularised way. Generality and particularity are two of the main conditions that theories of political obligation have to satisfy together. Tacit consent in the form of residence would, if it was shown to be a valid sort of authorisation, commit a large part of the population to their own particular government and thus provide a satisfactory moral justification of the obligations suitable to its political nature. But residence is far from being a validating acquiescence to political authority.

The second kind of action construed as a sign of consent is the acceptance of benefits provided by the government of one's own country. This appeal is found in Locke, in his *Second Treatise of Government*. Such benefits have usually the status of public goods, namely goods which may be

²⁰Green 1988, p.175.

reasonably regarded as valuable to (almost) everyone and which are nonexcludable and nonrival in nature.²¹ However, acceptance of such benefits constitutes, at best, a 'consent-implying act' - namely, an act which commits morally to the same performance which would be required on the basis of consent but which would not normally be taken as an attempt to consent nor its agent to have intended to consent - and not a clear sign of consent.²² It is an act better described and justified on the basis of the principle of fairness, which will be discussed in Chapter Four. Although, as I will argue in that chapter, an adequate interpretation of that principle has to be voluntarist, its nature is still different from consent. Acceptance of benefits is deprived of a directly consensual character. And it is vulnerable to the objections to the principle of fairness as a ground of political obligation.

The third candidate is voting. Plamenatz²³ and others appeal to democratic elections as a proper indication of consent to the authority of the state.²⁴ Yet, reliance on voting involves at least these difficulties. Firstly, the background conditions for qualifying elections as free seem to be properly met only in direct participatory democracies.²⁵ Direct democracy, however, is not found within any current democratic society.²⁶ Secondly, the contemporary expression of liberal ideals by representative democracies is defective. Voting for representatives is the kind of authorisation which was referred in the

²¹'Non-excludable' means that such goods, once produced, cannot be enjoyed by some members of a society without being enjoyed by all the others. 'Non-rival' means that the extent and way they are enjoyed by an individual does not affect the utility enjoyed by others. For a definition of public goods similar to the one I give here, see Harriott 1996, p.120. For a more extended discussion of, and bibliography on, public goods see chapter four.

²²This point has been argued decisively in Simmons 1979, pp.88-95.

²³Plamenatz 1968, p.170. Although, in justice to Plamenatz, we can take his theory on the whole to be an attempt to account for aspects that should create more or less conditions of political obligation rather than arguing that voting expresses consent. More precisely, his claim can be taken to be that a society which allows voting is more legitimate than one which does not. Nevertheless, my following points on the relation between voting and consent still hold.

²⁴Voting can be taken as explicit rather than tacit consent, given that it is an act of commitment to specified aspects of a constitution. But here it is discussed as authorisation of specific governments which might be taken as a sign of consent to political authority and in this respect its function is of a less overt kind.

²⁵Namely, where there is direct, equal, extensive participation in political decision-making. Even in such polities, mixed motivations in voting (i.e., the presence of both self-interest and concern for the common good as working motivating bases of decision-making) complicate the issue of consent. For example, on which of the two grounds does consent count? And how do we understand which motivation operates each time?

²⁶For this observation, see, e.g., Horton 1992, p.37 and Wolff 1996a, p.45.

above discussion of explicit consent as a questionable paradigm of self-assumed obligation. It is in fact a promise to obey the directives of the representatives, an attitude reflecting more conformity to, rather than willing and active approval of, those directives. Also, the social differences (class and sexual) and circumstances present in modern democracies do not allow for an informed and deliberate choice of rulers at a general and equal level. Thirdly, and in the face of the second criticism just made, there are (at least) two points which suggest failure to meet the generality condition of political obligation as understood and applied in the debate. First, many people abstain from voting and the choices of many others are defeated in the elections. Can these persons be regarded as voluntary supporters of the elected government? The former surely not and the latter only if they themselves confirm the result as their second-best preference.²⁷ The second and most important point is that, even if voting was sufficiently general, it would not necessarily imply recognition of the authority of the state. It could express a choice of good over bad governments, consistently made even by an anarchist, and other instances of decisions concerned with who shall rule but not bearing on questions of the justification of authority.²⁸ Given the alternatives available, any individual can vote on specific aspects of a constitution without at the same time expressing his or her opinion on the general question of its foundation. On the other hand, even if through voting citizens legitimated government, this would still not authorise every significant act of it and thus would not establish a permanent, actual obligation to it. On the whole, voting takes place within already existing institutions, namely when the existence of the state is taken as a given. It cannot thus be taken as basis of an obligation to the state.

Having presented these arguments it should be clear now that appeal to tacit consent is not as promising as it appears to be initially. Silence needs careful detection and interpretation, and legitimate inference rarely obtains. Tacit consent fails to exemplify the kind of act which could be seen as the

²⁷This shows, in addition, that possible appeal to the consent of the majority as binding for all invokes a form of consent which is redundant to personal consent and thus open to all the problems that the latter has been shown to involve; for this, see Horton 1992, pp.39-40.

²⁸For this point, see *ibid.* p.38. This way particularity as required for political obligation is not satisfied.

voluntary undertaking of political obligations at a sufficient level of generality. This is the fundamental complaint that anarchists raise against voluntarists.

Here is where we can return to the important, additional insight provided by Hume in his discussion of social contract.²⁹ Hume explains the distance between philosophical appeals to an original contract as the basis of political authority and the actual relation between individuals and the governments of their societies. He stresses the effects to the acquiescence on the part of individuals of force, necessity and habit and his criticism of residence examined above is an aspect of this demonstration. But the crux of his argument is that the constraints of political authority have a special nature. We can escape constraints of a different nature but political constraints are *inescapable*. This distinctiveness of political norms requires a distinctive perspective on them and a distinctive way in which we can think about whether they are constraining. We cannot derive the best political norms through abstraction. The objects of allegiance to existing societies are very complicated for an ideal appeal to consent to provide a proper explanation and basis of it. We have to provide a justificatory basis of political norms which accounts for and at the same time overcomes the actual inclinations of individuals and the conditions of social life and their complexities. We have to attend to their special nature and find a proper way of assessing them in view of that nature. If we insist in the language of consent, in the case of residence, for example, it can justifiably be asked: where are the alternatives given to each individual? Why do they have to live with the constraints imposed on them without ever having given their free consent?

This is to a large extent the essence of the anarchist perspective. Anarchists remind us that the political nature of institutions and of the obligations attached to them ask for a special kind of justification. The moral reasons provided in their support might account for the acceptability of certain aspects of them but they need first and foremost to apply as a recognition that the coercive and inescapable nature of political institutions puts particular constraints on what is going to count as legitimate justification. We might be advised to support political institutions, but why is this an overriding

²⁹Hume 1748 (*Of the Original Contract*).

obligation whose violation should be punished? How is it that a coercion-based determination of social relations is ever justifiable? For Hume, consent theories cannot give the answer. For the anarchist, such a need for a proper assessment of the nature of the political draws attention to the significance of choice, the character and role of which must be shown to be much stronger than that of the acts involved in tacit consent. For this, hypothetical consent seems a more promising approach.

2.1.3.Hypothetical consent.

Thus, the next candidate for grounding political obligation in voluntarist terms is *hypothetical* consent. This has received considerable attention from contemporary theorists³⁰ and an influential improvement of its Kantian roots in Rawls' *A Theory of Justice* (1971). However, it has taken a form which departs from voluntarism. This can be seen if we bear in mind an important distinction between two forms of hypothetical consent and the roles of their different rationales. I shall argue that there are two ways of understanding hypothetical consent, neither of which grounds political obligation. On the first understanding, which falls more clearly under voluntarism, consent is offered as a device of reasoning which helps us understand our actual disposition towards the authority of political institutions. On the second understanding, hypothetical consent becomes a moral route representing the conclusions of unimpaired and impartial reasoning. I shall show that the first way of understanding hypothetical consent is the more problematic of the two, and that the second, which is the one usually involved in theories of political obligation, is irrelevant to direct voluntarism.³¹

³⁰For example: Pitkin 1972; Dworkin 1975; Zimmerman 1983; Hampton 1986; Lewis 1989. For an influential contemporary theory of hypothetical contract outside the debate on political obligation, see Scanlon 1982; 1998.

³¹As explained at the beginning of section 2.1., in the context of the present discussion on political obligation voluntarism is understood in its most literal and direct form, namely as theories appealing to the unimpaired, *actual* decisions, choices and actions of individuals. The discussion on hypothetical consent introduces another dimension to voluntarism and it will clarify the extent to which this form of consent belongs to voluntarism as understood so far, or if it properly extends voluntarism to purely incorporate a different sense and whether this is useful for the debate on political obligation. For a relevant distinction between the two different trends claiming to be proper identifications of voluntarism, namely the voluntaristic and the rationalistic, see: Waldron 1993a, pp.51-57; Simmons 1999, pp.760-769.

It is important for voluntarist accounts to preserve a link between the ground of political obligation they provide and the quality of the institutions to which it is owed. Even if some form of actual consent was successfully given, it would have to be given to institutions which exhibit some morally relevant merits in order to be valid.³² In the context of the discussion of actual consent, an effective solution to the problem would be provided by the incorporation of institutional morality in an exhibition of a proper instance of voluntary undertaking by the theories under scrutiny: an act involving actual choice which was also reasonable would be likely to provide the required link. Yet, as explained above, these theories fail to provide such an instance of voluntary commitment and the link with quality remains a related unsolved problem. This fact eliminates the possibility of success for voluntarism on the basis of the most promising route. Thus, the attention of its defenders has been re-orientated towards *hypothetical* consent. In this context, there is an initial concern with institutional quality: the demand that the arrangements to which people consent should be to an acceptable extent reasonable and fair gives rise to the idea that this could be achieved 'by characterising the circumstances of voluntary agreement in such a way that indisputably irrational, unreasonable or unfair agreements [would] not meet the conditions for voluntary consent'.³³ A representative example of an attempt to such a characterisation is given by the description of the 'state of nature' provided by traditional contractualists.³⁴ The discussion below shows how the endeavour fails to combine voluntarism with a hypothetical consent view of political obligation.

The point of hypothetical consent is to show what it would be fair, reasonable and rational for people to agree to within appropriately

³²Simmons 1999, note 18. I suggested in the introduction that both quality and specific interaction are relevant aspects of institutional evaluation within the debate on political obligation. In the discussion of consent so far, given my focus on actual consent, I have developed elements of transactional evaluation (i.e., features of specific interaction). At this point of the discussion, I reintroduce the idea that quality, or, institutional morality, is relevant to any account of political obligation and thus should be examined in relation to the accounts analysed here, namely voluntarism. The discussion of hypothetical consent will provide the first steps for understanding and deciding the proper role of quality-based considerations in the debate.

³³Horton 1992, p.82.

³⁴Hobbes 1651; Locke 1690 and Rousseau 1762.

characterised circumstances. This signifies a departure from direct voluntarism, since it makes the *actual* consent of individuals irrelevant: the question here is not whether they have actually consented but whether they *ought to* consent. The hypothetical consent becomes a theoretical device used to represent the conclusions that reason would yield, whenever unimpaired and consistently exercised.

The first form of hypothetical consent which I want to discuss, however, both utilises this device and might allow voluntarism. It involves an understanding of hypothetical consent which aspires to actuality. According to it, consent serves to make us understand that under circumstances of unbiased reasoning³⁵ we *would* in many cases have consented to that to which, under the present circumstances, we may be unwilling to agree. In this way it claims to retain the character of voluntarism, since it shows that reason leads us to the conclusion that we would *in fact* consent, and thus to the realisation that we *do* consent, in many cases. Even though our reasoning does most of the job here, the last court of appeal lies in the existence of a disposition in us to personally consent. Unfortunately, this form of consent falls prey, even if in a counterfactual way, to similar problems to those which affect the notion of personal consent and its function within voluntarism, and which were discussed in section 2.1.1. Most pressing in this case, the validity of our disposition to consent depends largely on the circumstances within which such a consent works. Its existence and function does not generate obligations unless the circumstances are such that the conditions of the validity of consent survive the relevant thought-experiment, i.e., that the disposition for actual choice applies naturally under them. Thus, in regard to most of us, it is very difficult to prove what we really think in each case about the relevant functions of the political institutions of our country of residence and that our conclusions represent a valid choice. Once again, the required satisfaction of both the generality and the particularity conditions of political obligation is not achieved.

³⁵Namely, when being ready to adopt the course of action that is derived from rational and reasonable deliberation, not influenced by our knowledge of information concerning what is beneficial to our personal interests or by our feelings about the persons involved in the relevant case.

It follows that the *possibility of agreement* collapses once more. These considerations show that the attempt, under this first form, to combine voluntarism with the rationale of hypothetical consent, so as to justify political obligation on its basis, is problematic. It is because of this that a different form of hypothetical consent is usually involved in accounts of political obligation.

This second form of consent provides the most representative implementation of the essence of hypothetical consent as described at the beginning of our discussion of hypothetical consent (pages 82-83). It is this form that constitutes a device used to clarify the demands of Reason. It concentrates exclusively on what a rational, reasonable and unbiased person is in the position to recognise as indisputably reasonable and fair; that is, it provides a theory of *good reasons*. In this way, consent becomes irrelevant. Voluntarism as represented in forms of actual consent is absent in this hypothetical account. On the other hand, if the fundamental intuition of voluntarism is modified via the rationale of hypothetical consent, such a rationalistic voluntarism seems to be invoked within a theoretical background where it plays no role. Hypothetical consent cannot be located within the voluntarist effort to prove the actuality of agreement. One could of course argue that if a question such as 'can I will that...' *reveals* moral aspects which were not visible, then surely voluntarism *has played* a fundamental role in deciding the possibility of agreement. Whereas I agree with this, my claim is that it has no role to play for *actual* obligation. Whether or not it is accepted as a proper expression of the essence of voluntarism, the rationalism of hypothetical consent is still distinct from the concern with actuality invoked in straight voluntarist accounts.³⁶ The theorist then has to choose between an approach which commits him to a proof of actual, valid choice - which so far has been shown to be unsuccessful - and one which provides a phenomenology of how we might feel about our duties through reasonable reflection - which is important for explaining and affecting choice but does not actually prove its existence and application.

³⁶Being such, it remains a question whether it can ever be a direct basis of political obligation. For more clarifications, see my discussion of a stronger claim in favour of contractualism and hypothetical consent in section 2.1.6.

One important point to derive from these considerations is that hypothetical consent - which is not, as explained, of an actual voluntary nature - might have its ultimate source either in 'teleological' or in 'deontological' accounts of 'good reasons' for political obligation.³⁷ Its success thus depends on the success of either of these theories, though, as I shall proceed to argue in Chapters Three and Four, neither is, in fact, successful. My discussion of an improved understanding of contractualism below anticipates these difficulties: it generates doubts as to whether hypothetical consent should be used to ground political obligation in the first place.

The conclusion of the examination of hypothetical consent in the light of the anarchist criticism is indicative of the continued failure of voluntarism to establish the possibility of agreement. The first application of hypothetical consent remains bound to the failures of its individualist roots.³⁸ The second and most accurate application of it, on the other hand, provides a route towards a promising account of political obligation and it accommodates concerns about the quality of institutions, but, in doing so, it departs from direct voluntarism; its plausibility and success is thus independent of the present discussion.

2.1.4.Raz on consent.

At this point, I turn to consider Raz's views on the validity of consent, as set out in his book *The Morality of Freedom* (1979a). My discussion of Raz forms a natural bridge between the preceding examination of consent and the following criticism of contractualism.

Raz examines instrumental and non-instrumental justifications of consent as a ground of authority and considers the extent of its validity in each case. The conclusion he derives from his reference to instrumental justifications is that, 'on instrumental grounds [namely, considerations regarding the benefits either of consent itself or of being able to consent], consent can only be held binding if it is so qualified that its effect is *almost entirely confined to*

³⁷Horton 1992, p.88.

³⁸It faces all the problems faced by actual consent accounts of political obligation, among which is the problem that it cannot keep voluntarism in line with a concern about the quality of institutions.

reinforcing independently existing obligations to obey ... But it cannot be used as a way of endowing anyone with authority where that person had none'.³⁹ This assertion is founded on the recognition that whilst consent might be used to facilitate the establishment of authority where there are independent good reasons for so doing, its unqualified and unlimited use is more likely to lead to bad and undesirable consequences,⁴⁰ which defeat its initially valuable role. Raz's remarks are on a par with the preceding arguments, which show that consent does not constitute a generally applied actual basis of political obligation and that, in its failure to represent choice on this matter, it needs to be established on further grounds in order to ground political authority. They prepare us for the forthcoming examination (later in this chapter and in the following two chapters) of attempts to derive a general political obligation from (hypothetical) consent as a theory of good reasons and of their limitations.⁴¹ These conclusions can be confirmed by the discussion of social contract below.

2.1.5.Social contract theories.

Appealing to *Social Contract* is the most popular way of developing a consent-based theory. Thus, it is vulnerable to all the preceding criticisms, regardless of its precise formulation. Therefore, the role of the following discussion on contractualism is merely to provide some additional considerations which throw more light on the anarchist attack on voluntarism. The objective is to confirm that, when subjected to anarchist scrutiny, the centrality of free individual undertakings within the voluntarist account of political obligation either commits the theory to an ongoing attempt to solve

³⁹1979a, p.90 (emphasis mine).

⁴⁰Such bad consequences may be unjustified serving of personal interests; such undesirable ones may be unpredictable misfortunes as effects of the shortcomings of human knowledge.

⁴¹Raz's discussion refers mainly to actual consent. It is developed within the context of his own theory of political authority, which is based on the idea that state authority is justified only when it is proved to be the best way for individuals to realise the independent reasons that apply to them. As explained in the first chapter of this thesis (section 1.3.), his theory consists in a combination of three theses which express this idea, namely the 'normal-justification', the 'preemptive' and the 'dependence thesis' (e.g. Raz 1985). Yet, the role of consent in such a theory applies also to the relation of hypothetical consent to good reasons examined here, even though the rationale of the latter differs from that of actual consent.

the problem of agreement or is transformed in a way that compromises the theory's primary appeal to such undertakings.

The classical contract theorists Hobbes and Locke were haunted by the problem of *the possibility of agreement*, since its resolution was the decisive move in establishing their theories. This problem remains crucial and perhaps insoluble for contemporary contractualists as well, even though it is misleadingly circumvented by the appeal to hypothetical contract.⁴² The use of tacit consent and of hypothetical contract created, for the most part, either a fictional actuality of agreement or the mistaken impression that from the detection of desirable characteristics of the state we can assume, without further proof, the possibility and existence of agreement.

So much is to restate that for contractualists the problem remains vivid.⁴³ Both Hobbes and Locke used social contract to describe an initial undesirable pre-social order and explain the constitution of civil society through a contractual agreement of individuals as a rational escape from that order.⁴⁴ And, while in Hobbes the two stages towards the establishment of authority are simultaneous,⁴⁵ with Locke's theory it becomes clear that the move from the creation of civil society to the recognition of authority is a distinct one, and it is this move that involves the (actual) consent from which political

⁴²This is the case only with regard to contractualist theories of political obligation. Those contractualists who offer their theories as accounts of principles for already existing institutions do not offer direct replies to the debate on political obligation and their arguments should be examined in a different light. Characteristic examples are the theories of Rawls and Scanlon. I return to this difference within contractualism throughout the thesis.

⁴³Or, as de Jasay puts it, for social contract theories 'the problem of keeping promises is crucial and indispensable' (1996, p.140).

⁴⁴In Hobbes however the state of nature involves a social characterisation (life without security), while in Locke it is primarily a moral characterisation: it represents the moral condition of individuals who have no political obligations (Simmons 1999a). This difference supports the idea that Locke's theory of political obligation remains more clearly one of actual consent: that instead of deriving political obligation from a state of nature hypothetical consent argument, as Hobbes does, he rather uses the latter as a way of depicting the merits of political institutions as well as the moral condition of non-political individuals but without deriving an alteration of that moral condition from those merits. Also one could see the state of nature arguments of contractualists as separate justifications of the existence of the state rather than as arguments for political obligation, whether or not they tried to derive the one from the other (see Simmons 1999: his distinction between justification and legitimacy; see my introduction, section 1 note 7).

⁴⁵At the same time when the parties agree to create political society they directly give authority to the Sovereign through individual, non-contractual transference of their rights to it.

obligations arise and which is of great importance for contractualism.⁴⁶ Locke's theory is a paradigm of an actual contract account of political obligation. It thus insists on the importance of actual consent as a way of declaring the value of choice. But, without losing its value, actual consent still renders the theory vulnerable to the problem of agreement which, as shown in the preceding discussion, such a form of consent generates for political obligation.

The way the problem of agreement shows up in Hobbes' theory is characteristic.⁴⁷ In Hobbes, the impossibility of agreement takes the form of a paradox: the very impossibility of agreement constitutes a central reason for requiring agreement.⁴⁸ The combination of this paradox with the Hobbesian instrumental notion of rationality⁴⁹ has brought Hobbes' theory to the fore of social choice and rational choice theory. These theories are mainly concerned with rendering individual choices compatible with collective ones and with the connected problems of cooperation and coordination of decisions and actions in the social sphere. Hobbes' description of, and contractualist solution to, the 'state of nature' has acquired a dominant transformation through these theories and the problem of agreement has been depicted as the game-theoretical situation called the 'Prisoners' Dilemma' (PD).⁵⁰ The PD however differs from problems of pure co-ordination (in its most ordinary sense) in that it is

⁴⁶The creation of civil society itself is the first necessary and important act and the legitimate escape from the state of nature for Locke, and it is the result only of an actual and *unanimous* original contract between all those individuals who wish to create it (1690, II, pp.96, 99, 171, 243). The transference of political authority from civil society to government (through majority rule) is legitimate only on the basis of a firstly created membership of this kind and it involves a trust based on actual, individual consent (ibid.). Furthermore, those individuals who want to join a civil society after its first creation may do so by consenting to the terms of the original contract and thus explicitly giving their own trust to government (ibid. p.89). For useful discussions of the two-stage creation of authority and the role of individuals' actual consent in this in Locke, see, Simmons 1999a; 1999b; Lloyd Thomas 1995, pp.11-56.

⁴⁷I concentrate here on *Leviathan* (1651).

⁴⁸See e.g. de Jasay 1996, p.142. The same paradox holds for Locke: see Hampton 1997, p.64.

⁴⁹Namely, of the reasoning of individuals as one based on rational self-interest, on the protection and promotion of their private situation.

⁵⁰The name was given by A. W. Tucker in the 1950s. The game was invented by M. Flood and M. Dresher. For representative literature, see, e.g.: Flood 1958; Gauthier 1986; Hampton 1986, chaps. 2 and 3, and 1997, pp.41-49; Sanders 1996, pp.261-265; Harriott 1996, esp. pp.121-125. Against the dominant tradition, Hobbes might be seen as not read through the Prisoners' Dilemma. The Hobbesian contract might be seen as a contract for self-preservation, not self-interest. But my argument concentrates on the dominant reading of Hobbes' theory. It suffices to say that the results of the anarchist criticism remain the same under either reading.

primarily a problem of the impossibility of co-operation (due to an unwillingness based on the individuals' rationality of self-interest, due to the fact that it is in their personal interest to behave badly). It is not one of practical obstacles to achieving the best application of co-operation, which ordinary co-ordination is about (based not so much on rational unwillingness but on lack of knowledge of their situation on the part of the individuals involved or on their doubts about the knowledge of the rest of the participants and thus about the possibility of the morally best outcome).⁵¹ By use of this game the point for contractualists is to show that the state is a preferable solution to a situation where self-interested rational individuals are led to continual deception, which deprives them all from the advantages of co-operation. The state is seen as the guarantor of agreement and advocated as the most effective provider of essential goods.

Irrespective of the related dispute between anarchists and defenders of the state about the best social order for achieving these tasks,⁵² the theme is interesting because of the two issues which underlie it. These issues highlight the failure of voluntarism to ground political obligation on actual free agreement.

First, the paradox of agreement remains insoluble. On the one hand, the state seems to *presuppose morality*, since individuals unable to keep their promises would not be able to keep the contract to create government. On the other hand, the state is created *because* without it agreement is impossible. In the first case, the state becomes unnecessary, since agreement can be enforced by morality. In Raz's words, if we obey due to independent moral reasons, agreement as a further reason for obeying becomes derivative and is rather a part of and confirmation of primary reasons for obligation than the basis of it itself. In the second case, the crucial question is created for contractualism of how to prove the possibility of consent to the government itself by individuals who are unable to keep their agreements. Given that only the

⁵¹For this difference between the two, see, e.g., Raz 1990, pp.6-11.

⁵²The anarchists' arguments concerning this dispute are part of more *positive* proposals for alternative social orders and are a valuable extension of the direct anarchist contribution to the debate on political obligation. These arguments make use of the Prisoners' Dilemma and of discussions of public goods. See, for example, Axelrod 1984; Taylor 1976, 1982 and 1987; Olson 1965; Sanders 1996, 261-271; Green 1988, pp. 138-144.

government can play the role of 'an enforcing agent' in the first place, there seems to be no satisfactory response to this question.⁵³ Both Hobbes and Locke saw the contract to create authority only between individuals, they did not extend it to hold between individuals and the state.⁵⁴ The state, thus, became the only enforcer and guarantor of contract, in the case of Hobbes, an absolute sovereign not itself bound by any contract.⁵⁵ Yet, this does not solve the paradox, since it creates an infinite regress starting from a guarantor of the very accomplishment by the state itself of the role ascribed to it by the contract. But then that guarantor needs a guarantor, and so on.⁵⁶ Again, one could say, following Raz, that in the absence of morality there is no guarantee of and no validity in the enforcement of any agent.

The preceding considerations suggest that, for contractualists, the paradox of agreement is inescapable.⁵⁷

In fairness to social contract theory, however, we can see ways out of this dilemma. As far as the argument about the impossibility of the state is concerned, Hobbes himself does not believe in absolute egoism: his individuals are characterised by limited altruism, which leaves space for some sympathy for others and for compassion (1651). These features might still be a basis for a basic agreement to create and preserve a common guarantor, even if not for keeping agreements without him. What remains to be proved is whether we would agree to such a guarantor. Also, in his defence of the state Hobbes sees in the sovereign the universality which can guide individuals out of their egoistic tendencies, although it is on this that anarchists and defenders of the state disagree. But most importantly, there is further something to be said against the argument that the state is unnecessary if morality exists. Even if individuals are moral the state might still be

⁵³See de Jasay 1996, p.146.

⁵⁴It is important, however, to stress that Hobbes claims that the sovereign is finally and independently authorised *by each individual in particular*, but not through contract. See Hobbes 1651, pp.87, 221, 265.

⁵⁵In addition, in this authority ascribed to it by the contract made between the citizens, the sovereign is free to change the law at will. For this, see Cohen 1996, pp.167-170, based on Hobbes 1651, pp.313, 367.

⁵⁶See de Jasay 1996, p.146.

⁵⁷They support Antony de Jasay's claim (ibid. p.158) that the contractualist argument 'is either self-contradictory (contract can remedy the impossibility of contract) or circular (cooperation requires contract which requires cooperation)'.

needed for settling quite important problems: for judging what the demands of morality are and how to coordinate. For this, a hypothetical contract might be an indispensable device. It may be used as a route for finding out what the specific way of addressing interaction is. If, according to Raz's position, agreement can be valuable in reinforcing independently existing reasons for obedience, then its role in a hypothetical form in explaining what it is that we have reason to do and how we might get to know it is very valuable. This seems to be the strongest point of social contract theory and I will develop it in an improved understanding of social contract that I attempt in section 2.1.6. below. However, having such a role the social contract device provides a very useful explanation of how we might understand our duties to others but not a basis of the enforcement of these duties. In other words it might provide a good diagnostic of the reasons we have for explaining the state but not a proof of our support of it.

The second issue which arises for contract theorists in the present discussion is that concentration on the advantages to be achieved by the creation of the state reveals misdirected concern. The contractualist argument is transformed from one concerning the actual possibility of agreement into one about the merits of the state. The story about the social contract becomes a strategy used to confirm the merits of certain forms of government. In the case of Hobbes, it becomes an argument in favour of the state as an independent factor which *would* or *could* (or even, *can*) gain our agreement on the basis of its qualities. Agreement, possible or not, has no bearing on the success of this argument.⁵⁸ The theoretical basis of the latter ceases to be voluntarist. The link with the self-assumed commitment taken by voluntarists to establish a special relationship between individuals and their governments disappears, and the whole discussion is transformed into a debate concerning the accomplishments and desirability of institutions.

A central problem underlying the above issues is that the plausibility of the contractualists' conception of circumstances which make coercive (and even absolute) interference desirable is based on a presumption of the

⁵⁸Although agreement as used on the basis of the rationale of hypothetical consent has still an important role to play. See discussion of hypothetical contract in the next section.

necessity of coercion. In turn, this is rooted in our experience of the societies in which we find ourselves. As I indicated in the previous chapters and in discussing Hume's argument earlier in this chapter, coercion is not desirable in itself: it cannot be presupposed as inescapable, neither established without proper justification. More crucially, insistence on the role of coercion as a motivation for compliance seeks to found the authority of governments on the wrong ground. As it was claimed in the Introduction and in Chapter One, coercion is, indeed, a feature of the political. However, it is not its only feature and it cannot on its own create binding requirements.⁵⁹ As many critics insist, laws might be obeyed on the basis of prudential fear of legal sanctions. However, this does not reveal recognition of the law's authority, that is, of political obligation. There is a difference between explaining the role of coercion in social interaction where institutions are already established, for which the above arguments from social contract might be helpful, and connecting coercion to grounds for further justification without adequately defending it in the first place.

Even if the state of nature argument for the state established a need for institutions, such a justification would need to be constantly reinforced. The contractualist depiction of institutional merits might be providing a first motive for creating political institutions. But this does not exclude alternative possibilities and does not pre-empt the argument that freedom might be prior to certain merits and difficult to sacrifice. For this reason, the state of nature argument cannot be final and it does not in itself lead to justification of political obligation. The contractualist failure to prove consent-based agreement reflects a discontinuity between quality-based arguments for the existence of the state and arguments for the actual creation of political obligation through morally relevant interaction.⁶⁰ Through contractualism we can understand that although we might have reasons to see the state as a good thing to exist - for example, due to its ability to protect us - this does not establish a special relation of rights and obligations between political institutions and ourselves as the individuals who live in the territories where these institutions exist. There

⁵⁹On this point see Green 1988, pp.151-152.

⁶⁰For such a discontinuity, see Simmons 1999. This point is central for deciding the role of quality in the debate on political obligation.

is big difference between considering the state to be good and having an actual moral relation of duty to it, and none of these aspects can be derived from the other.

This discussion of contractualism reveals the strength of the anarchist attack on voluntarism. The considerations adumbrated show that the problem of agreement remains insoluble and its resolution by appeal to the services of the state is an illegitimate move, one which survives only outside the boundaries of voluntarism and has further defects of its own as an argument for political authority. In this, they are representative examples of the strength of the anarchists' strategy, which is to show that the free commitment of individuals which voluntarism considers to be its strongest weapon actually leads to its downfall, due to the inability of voluntarists to realise this requirement and give true expression to its demands.

2.1.6.A defence of hypothetical contractualism.

There is, however, a better and stronger claim in favour of the idea that hypothetical contractualism might provide a legitimate support for a voluntarist theory of political obligation. On its basis, hypothetical consent, precisely because it is a theory of good reasons, can be consistently incorporated within voluntarism, and can perhaps facilitate a solution to the central problem of the theory.

This claim makes use of a further argument for political obligation, found in Hobbes, that was not mentioned above. According to this argument, the citizen is bound by the law exactly because she is *the author* of this law.⁶¹ She *makes* the law and she is, therefore, contradicting her own will if she later denies its authority over her. By consenting to authorise a ruler, the individual never alienates her will, but still she lends its authority to him for the purpose of being bound by his directives.⁶² This 'argument about the citizen'⁶³ aspires to provide *a moral route* towards an understanding of what

⁶¹On this see Hobbes 1651, pp.221, 265. My discussion here is profited from the analysis of this and the following argument of Hobbes' found in Cohen 1996.

⁶²For a powerful argument in defence of the claim that, even in Hobbes' insistence on absolute authority, what is implied cannot, in the end, be alienation, but only lending to 'an agency' see Hampton 1997, pp. 49-52; 1986.

⁶³For this terminology, along with 'the argument about the sovereign', see Cohen 1996, p.169.

can be a subject of agreement in a way that stresses the centrality of the role of individual power, that is, of the freedom every individual has to make the decisions concerning her life on her own. This centrality is very much the focus of voluntarism.

According to this argument, the crux of contractualism is that you *lend* your individual power, but you still *retain* it. Yet, it is this idea that creates continual instability in the theory, since the problem arises of whether we can keep our power whilst, at the same time, lending it in such a way as to be bound by it. This problem is reflected, here, in the contradiction between the argument about the citizen and the 'argument about the sovereign', which Hobbes also adopts. According to that argument, the sovereign is *never* bound by the law, strikingly, for the *same* reason for which the citizen *is* bound, namely because he is the author of the law. This argument expresses the idea that, if it is the autonomous will of the individual that makes the law binding, then her decision to make it can be *changed at will*. And the significance of this claim does not lie in Hobbes' supposition that we are never bound to what we can change. Rather, it lies in the thought that, even if we are bound by a law as long as we do not change it, 'the very fact that [we] can change it diminishes the significance of the fact that [we] are bound by it'.⁶⁴ The possibility of change undermines the bindingness that the creation of authority by contract is meant to guarantee.

This worry is given precise expression by the problem of agreement, which haunts contractualism. A solution to it requires establishing the argument about the citizen whilst devaluing the argument about the sovereign, at the same time without undermining their common appeal to autonomy. It requires the establishment of the former in a way that the bindingness derived from the power of the will of the individual does not deprive her of this power. Thus, the problem of instability, or agreement, which contractualism faces necessitates a satisfactory moral explanation of the form which *the change of will* must take. Such an explanation is necessary, if the will of the

⁶⁴Ibid. p.170.

individual is to play, in a stable manner, the role that voluntarism attributes to it with regard to the problem of political obligation.

In this context, perhaps the most suitable manifestation of the crux of voluntarism as expressed in contractualism - i.e., that 'you lend your power but you still retain it' - is provided by a purely hypothetical contract, or a device which is no contract at all. This is perhaps the most promising route towards a solution to the problem of instability created for voluntarism by lack of literal agreement. Hypothetical contract, or consent, seems to provide the most representative form of voluntarism. As explained earlier (in section 2.1.3.), it is a theoretical device used to direct our reasoning to the conclusions it would lead us to whenever unimpaired. That is, to the conclusions we would reach when impartially deliberating on the basis of acceptable moral convictions.⁶⁵ These elements of the contractualist device make it special as a way of combining morality with rationality such that provides the bindingness of our will. Or so I argue below.

The conclusions derived are good in themselves.⁶⁶ Their moral input can be shown by means other than contract. They can be construed in a theory either as moral directives to which we might be committed unconditionally in a Kantian manner⁶⁷ or as commitments not necessarily moral in nature but still important to our personal identity and integrity.⁶⁸ And, so construed, they

⁶⁵Convictions such as those represented in Rawls' 'original position', which constitute our considered judgments about fair conditions on agreement and proper restrictions on reasons for principles (see Rawls 1971, pp.146-7 and section 24; 1985, pp.399-403; 2001 pp.14-18, 80-134). For this hypothetical contract device, see my chapter three.

⁶⁶They are 'good in virtue of [their] internal structure', their 'form' or '*functional arrangement*' (Korsgaard 1995, pp.107-108).

⁶⁷Kant's formalism establishes the authority of morality by disconnecting it from the contingencies relevant to human nature, e.g. from the problem of social peace, and making its laws universally prescriptive imperatives.

⁶⁸The affirmation of non-moral commitments might deprive the strictly moral from the superiority usually attached to it, as concerning demands that represent impartiality and which override commitments attached to particular persons, perspectives and lifestyles. Also, such commitments are rooted in human nature and the social effects on it. In this way, they might seem to create again the problem of instability, since human nature and society facilitate a *change of will* which undermines the 'law-like' status that would make them binding requirements (Cohen 1996, pp.174 - 177). Still, the centrality of such commitments in an individual's life and sense of identity can give them the role of valid and overriding requirements for this individual. Bernard Williams is characteristically devoted, as a philosopher, to a defence of such commitments and of the centrality of personal integrity in our lives and concerns about the ethical (see, for example 'A Critique of Utilitarianism', in Williams 1973, esp. chapter 5). And yet, there is a very natural though more subtle connection between normativity, morality and non-moral reasons for action, involved in the

can play the role of reasons for action (i.e. good reasons). Their moral validity is by itself important for creating the stability which helps contractualism.⁶⁹ But the irrationality of breaking these requirements, necessary in order to marry bindingness with freedom as required within voluntarism, can be shown only by the hypothetical contract. This device shows that a deeper aspect of the authority of such reasons lies in that they are the *commands* of our *reflective* will.⁷⁰ Our most considered judgments are the stipulations of our reasonable point of view.⁷¹ Having been extracted from our impartial and most considered judgements, these reasons can be seen as the directives of the will of a rational being which, at the same time, bind that being.⁷² Used in this way, as a method of making transparent to us the

present use of hypothetical contract, as explained below in the text, and emphasised in the work of contemporary contractualists (Scanlon 1982; 1998). This connection is based on the idea that individuals express their autonomy in a moral capacity they have to be motivated by a willingness to justify their reasons (of whatever kind) to others, to try and modify them according to what a 'reasonable' person would accept and to reach agreement (the 'reasonable' is a central idea of contractualism: *ibid.*; Rawls 1958; 1971; 1980; 1985; 1993; 2001; Simmons 1999, pp.764-767). This is where morality and its binding force lies, which is central in the present discussion (this rationale is basically Rousseauian but it also involves and carries further the idea of the autonomous motivation accorded to individuals by Kant). For more on this central idea of contractualism, see notes 70-73 below.

⁶⁹Their 'internal structure, [their] form, makes [them] fit to be willed as a law' (Korsgaard 1995, p.108).

⁷⁰'It is not the bare fact that it would be a good idea to perform a certain action that obligates us to perform it. It is the fact that [*though reflection*] we *command ourselves* to do what we find it would be a good idea to do' (*ibid.* pp.104-105).

⁷¹These judgments are reflected in the premises which guide individuals in the course of their choice and which represent their reasonableness (see note 72 below). Individuals face a common (social) problem and they have to take into consideration, and deliberate on the basis of, the responses of others. Through the hypothetical contract, they reason from the same premises and reach the same solution to that problem. The acceptable solution is the one they all agree to, because the guiding idea is that there is no break-point in the procedure, agreement is the only way forward.

⁷²Because, as Korsgaard explains, they pass the test of 'reflective endorsement' (1995, lecture 3). They are thus the principles expressive of 'the conceptions of ourselves that are the most important to us', the violation of them would mean that we contrast our best reason, lose our 'practical identity' (*ibid.* pp.100-102). It can now be legitimately claimed, in support of the argument from the citizen, that the authority of such reasons is 'beyond question' because it is 'the authority of [our] own mind and will' *as a legislator* (*ibid.* p.104). Another explanation lies in Rousseau's words: '...there is a difference between incurring an obligation to yourself and incurring one to a whole of which you form a part' (1762, book 1, ch.7). The reasonableness of our considered judgment constitutes an "entity", or, will, which is a whole of which we are part and as such it is binding on us in a way that we wouldn't be bound if we appointed obligations on ourselves irrespective of this reflective capacity. We thus follow the directives of a will that cannot be changed according to personal inclinations (and cannot thus be destabilised by them). Also, it remains an important aspect of the contractualist framework that in endeavours to assert the validity of either side, moral principles and considered judgements stand in mutual support (see on 'reflective equilibrium': e.g., Rawls 1971, pp.19-21, 46-53, 578-586; 2001, pp.29-31, 66-72, 134, 136).

demands of reason, hypothetical contract offers an expression of *a moral route of conception* of what can be, or *ought to be*, a subject of agreement, as *the essence* of contractualism.⁷³

In this way contractualism becomes a primary expression of self-governance. Hypothetical contract represents a process through which individuals can see their reason work and forms the conditions which govern their lives by substantial reference to themselves. They come to understand their responsibilities and duties in the light of this framework. They get involved into a kind of reasoning which helps them see how they can be guided by impositions they themselves decide that are proper to determine their life and which represent their will and sense of their conditions. It is a process which improves their self-understanding and at the same time combines it with a comprehension of the moral terms which should characterise their personal and social relations. They thus evolve as moral agents, who realise themselves by putting constraints on themselves. Hypothetical consent provides *a phenomenology of how individuals can be ruled by themselves* and represents a route through which they come to identify with important aspects of their life and social world even when they do not actually give their consent.

However, this approach does not remove the problem of agreement as the focus of the present criticism of voluntarism with regard to political obligation. It only preserves a hope for proving political obligation from a different direction through the rationale of hypothetical contract. As argued above, such a contract is irrelevant to voluntarist attempts to explain political

⁷³This is the crux of the rationalistic tradition of Voluntarism, which is largely inspired by Rousseau's idea of the 'general will' (1762) and newly developed by contemporary contractualists (especially: Rawls 1958; 1971; 1985; 2001; Scanlon 1982; 1998). The element of voluntarism in this outlook lies in a focus on reasonableness (through an insistence on understanding and agreement) and in individualism: principles are legitimate only when accepted by individuals, i.e., as results of their capacity for self-governance (as expressed morally. See notes 71-72 above). The central idea is that individuals have the willingness to modify their reasons on the basis of a shared moral ground, one which others would not reasonably reject. This perspective gives a new direction to the role of social contract in relation to political institutions. According to this understanding, the idea of reasonable agreement as the subject-matter of contractualism functions as a heuristic device for the formulation of legitimate moral principles which might then be applied to existing political institutions and determine their acceptability. The aim is neither to establish the existence of political institutions nor to prove a general political obligation. It is rather to find and justify legitimate principles (for these points, see note 74 below).

obligation in terms of actual agreement and to establish the plausibility of voluntarism as applied to this obligation on that basis. It rather anticipates a theory of good reasons for political obligation. It offers a route towards understanding what the proper basis of our duties and relations might be, rather than a direct basis of duties and relationships themselves. The stability of individual will which rationalistic voluntarism offers is the main indication of the value of a phenomenology of how we might feel obligated which the theory provides. As such it is morally important but only theoretical. In departing from actual voluntarism, it does not secure the kind of actual interaction which the relationship of political obligation, I argue, requires (an actuality demanded by the nature of this obligation as reflected in the four conditions applied in the debate: see my Introduction and Chapter Five).⁷⁴ And it remains to be examined in the following chapters whether any theory of good reasons can do this.

2.2. Dismissing ‘the conceptual argument’ for political obligation.

Let me preface the general conclusions of this chapter by some brief comments on a different approach to the problem of political obligation. This approach might at first seem to provide an alternative solution to this problem and to eliminate the difficulties examined so far. However, closer inspection reveals that it is not part of this debate. My aim here is to dismiss it as an obstacle to a proper speculation of the issues in question.⁷⁵

⁷⁴Hypothetical, reasonable contract is a form of reasoning to be applied when we examine the legitimacy of the activities of political institutions from within and apart from an establishment of their bindingness. It concerns the *content* of legitimacy, the provision of sound principles of legitimacy in the light of which institutions, as an unavoidable reality, must be assessed. In the hands of theorists such as Scanlon, this form of contractualism does not see its role as arguing for actual obligations. Actual obligation could result only in the (improbable) case of absolute coincidence between actual institutions and ideal principles. That is, if existing institutions were a perfect application of the principles of legitimacy so that individuals could affirm those principles by obeying the institutions constantly. These points prepare the way for re-estimating the attempt of those contractualists who use hypothetical contract to ground political obligation: their very approach within the debate is misguided (see my chapter five). This lies mostly in the discontinuity between quality and actual obligation indicated in the preceding discussion of contractualism in relation to arguments from coercion.

⁷⁵This, not only with regard to voluntarism but also as far as the other theories criticised in this thesis are concerned.

This alternative approach is known as 'the conceptual argument'.⁷⁶ It adopts an internal viewpoint with regard to the problem of political obligation, in order to deny its very existence and meaning. It advocates an internal, logical relationship between the state, or political authority, and political obligation, on the basis of which it attributes the requirement for a general justification of political obligation to a conceptual confusion: the very concept of authority is claimed to be inseparable from political obligation and thus to pre-empt any need for independent justification of the latter.⁷⁷ In addition, it considers political obligation to play a constitutive role in our understanding of ourselves as members of a polity.⁷⁸ In this way, the conceptual argument dispenses with the problem of finding a moral filter for separating the unacceptable from the acceptable political requirements. They are already moralised by our membership in a particular polity.

Admittedly, such an approach could undermine the whole debate over political obligation, since it entails that the moral aspect of the problem of political obligation,⁷⁹ and all the criticism of the state deriving from it, has no meaning. But, accepting this approach has two negative effects. First, it sacrifices the connection of the notion of obligation with the self-assumed undertakings expressive of personal freedom. Second, and, more importantly, it circumvents, instead of addressing, the motivations which give rise to the problem.

The first worry reflects the following significant point: even though moral obligations are not necessarily and exclusively connected with voluntariness - for example, duties to aid and parental obligations are not self-assumed⁸⁰ - the concept of 'obligation' itself involves the *active role* of individuals conceived as free and equal persons able to make substantial judgments and decisions, not only in the private, but also in the public

⁷⁶See Pateman 1985, esp. pp.104-105, 132; Horton 1992, pp.137-145,170.

⁷⁷See Horton 1992, p.138. This is not the correlativity thesis explained in my introduction, which concerns understanding the notion of political obligation. The conceptual argument represents a normative outlook to the problem of political obligation as a whole, a position about the very point of asking the question of such an obligation which has normative implications.

⁷⁸McPherson 1967, p.64.

⁷⁹See introduction, section 1.

⁸⁰See Horton 1992, pp.43, 144.

domain.⁸¹ It reflects the effective initiation of action which the voluntarist insistence on the importance of individual will requires.⁸² This perspective is characteristic of liberal political theory, but it can be adopted by any view of social relationships which rejects theories of 'divine authority' and of 'natural subordination', which involve a hierarchical and inegalitarian understanding of the positions of and relations between individuals within society.⁸³ That obligation embodies this perspective is what brings it in conflict with obedience or mere subordination.

The second worry derives from a more significant point and central from the perspective of the current inquiry. With this point I close my discussion of the conceptual account, satisfied that its failure has been established. It was mentioned in the Introduction that the use of morality as a way of *filtering* political requirements serves the very motivations which give rise to the problem of political obligation. These motivations are basically found in a concern to avoid the unlimited and unqualified imposition upon us of political requirements and the hardships of not obeying them, and in the resulting doubts about the very idea of being subjected in this way.⁸⁴ If we accept the conceptual argument we disregard these motivations and we are deprived of any representation of the reflective dispositions which enable us to create, from time to time, an autonomous, critical distance from the political world we inhabit. The problem which the conceptual argument denies reflects an aspect of ourselves as reflective social beings. Thus, by rejecting this argument, and, in doing so, accepting the problem of political obligation, we continue to assert the expression of ourselves as autonomous, reflective beings and a reaction against blind subordination to existing authorities which this motivates.⁸⁵

⁸¹See Pateman 1985, pp.13-14.

⁸²See also the beginning of my discussion of arguments regarding theories of consent in section 2.1.

⁸³For a paradigmatic examination of such theories see Jean Hampton 1997, chapters one and two.

⁸⁴See Meckled-Garcia 1998, pp.9 and 24.

⁸⁵Hypothetical contractualism in being a route of reflective deliberation asserts this aspect of ourselves and in this way it has at least a *negative* impact with regard to political obligation: if we can show that we would not have possibly agreed to some conditions, probably we *should not*.

2.3.The implications of the anarchist criticism of consent.

The general conclusion derived from this chapter is that it is the very *centrality of the voluntary undertakings* within the contract and consent theories that leads to their failure as accounts of political obligation. The essential feature of these theories cannot be combined with the basic conditions involved in a proper justification of political obligation - in particular, with the generality condition compatibly with the other three, namely particularity, bindingness and content-independence - and so cannot found a satisfactory account of that notion.

This, to be sure, is already recognised by the relevant literature as the upshot of the anarchist criticism of voluntarism. My aim in this chapter has only been to provide a careful elaboration of the anarchist criticism, in order to make clearer the roots and the development of its conclusion and to establish its soundness. However, the aim in so doing is not limited to providing such a clarification. It lies, rather, in establishing the *implications* of the success of the anarchist criticism. It is these that will concern me in this section.

The lesson that should be learnt from the anarchist criticism of voluntarism is that neither the value of voluntariness nor the conditions of a valid justification of authority should be dispensed with. The failure of voluntarism indicates the defective character of the state and connects this to its involuntary establishment.⁸⁶

It follows that voluntarism provides a significant element to be used as a test for forms of social order. Even if not unanimously accepted as the primary or necessary condition on them, *the free commitment of individuals* constitutes a desirable feature for such forms to incorporate. An insistence on

⁸⁶For a useful account of the basic features of 'the state' see Miller 1984, p.5. As explained in note 1 of the introduction, I use the state interchangeably with 'institutionalised coercion'. The latter designates the function of political institutions as distinct bodies which concentrate and monopolise the determination of the rights and obligations of individuals and use force in order to back up such a determination. The absence of voluntariness for political obligation indicates the coercive character of the state. And that this absence reflects failure to meet the four conditions of political obligation indicates that it is the 'political' character of obligation (or, of the state) - namely, its coercive, binding and exclusive nature - that cannot be combined with voluntariness to create a proper instance of a suitably particularised and sufficiently general moral relationship. For a basic definition of the notion of coercion and a useful analysis of other instances of the notion of 'power' see Taylor 1982, pp.13-25.

the centrality of voluntary undertaking would guarantee, and enrich our view of, the value of any social organisation to the extent that such organisation is compatible with it. A strong reason for this is the compatibility of this feature with, and expression within social life of, the value of *freedom*, or, *autonomy*. This claim holds under any of three ways in which autonomy might be construed: (1) as a property of persons conceived as 'ideal moral legislators', capable for an impartial ascription and review of moral principles; (2) as a right each of us has to arrive at decisions about certain aspects of our life without interference from others; (3) as 'self-governance', involving conscious understanding of the components of whatever problem should arise as well as moral integrity.⁸⁷

Our societies do not facilitate the exercise in the political sphere of a practice analogous to promising as exercised at a more private level. But this has been encouraged to a large extent by the dominant view of the political as a centralised and coercive form of social order. Perhaps it would help to consider more pluralistic representations of it, having the form of 'free social relationships' of a cooperative character, as constructed 'on a small scale'.⁸⁸

⁸⁷For these three senses of autonomy see Hill 1991, pp.43-51. Taylor's analysis of 'pure negative freedom' and of 'autonomy' provides a further clarification of these dimensions of freedom: according to the former, a person 'is unfree if, and only if, his doing of any action is rendered impossible by the action of another individual' and the latter involves that 'the individual must have the capacities and inclination for subjecting his values and beliefs, norms and principles to critical scrutiny, he must be able to make out of this critical process a coherent set of values, beliefs, etc., and he must be able to choose or to create (with the cooperation of others) an appropriate role or character with which he identifies' (1982, pp.142 and 160 respectively). For the anarchist approach to freedom, in striking opposition to coercion, see note 29 of my introduction. In its most complete expressions, this approach involves an understanding of freedom which is more inclusive than the above conceptions and captures better the picture rendered by them. Such an understanding can be expressed amply by the idea of 'free individuality', which can be identified as the sort of scrutinised and round life conduct reflected in a combination of self-legislation with self-realisation and the kind of self-expression and self-development involved in it (see Habermas 1994, section I). I take this ideal to be effectively captured by Karl Marx's notion of 'human emancipation' as the liberation of our humanity from all material obstacles and all the suppressing dualities which curtail the free development of human capacities, experiences and activity in the world, a liberation effected within social activity and interaction and transcending mere 'political emancipation' (Marx 1843, p.57; 1844, pp.92). Yet, a basic understanding of freedom might suffice to motivate the central concern with it which characterises anarchism and the inevitability of such a concern for all human beings. For this understanding, see note 93 below and the paragraph to which it belongs.

⁸⁸Miller 1984, p.183.

We can find such an orientation among the main anarchist proposals,⁸⁹ and it is compatible with the normative core of voluntarism. It also facilitates a reconciliation of our private with our public lives and a barrier against any radical separation of these two domains.⁹⁰

But the crux of the present insistence on voluntariness lies in the following point. Freedom may be respected in ways much less strict than explicit voluntary commitment and alternative views of the political might properly accommodate a looser sense of self-assumed choice. The aim of the present discussion is not to insist exclusively on contractualist instances of voluntary commitment.⁹¹ It is rather to introduce the element which makes voluntariness, either in a strict or in a looser sense,⁹² important and which will prove central in the rest of this thesis for the problem that I examine: that is, the idea that individuals' self-determination and equal, active, effective participation should be preserved as the central characteristics of social relationship. This element remains the constant concern of the anarchist challenge. It reflects the anarchist claim that authoritarian attitudes undermine the status of persons as free and equal and the kinds of interaction which are suitable to them.

As argued in the preceding discussion of hypothetical consent, it is important for human beings to see fundamental aspects of their life being

⁸⁹See Joll 1964, especially his presentation of the ideas of Proudhon, Bakunin and Kropotkin. See also original books of these theorists such as: Proudhon 1851; Kropotkin 1877-1920; 1902.

⁹⁰For a criticism of this separation, see Pateman 1985, e.g., pp.129-133.

⁹¹Although, due to its very nature, for a justification of the political as we know it, it is more likely that this element will be necessary. For more clarification, see my chapter four, section 4.3.2., on the relation between existing politics and the idea of schemes of social cooperation.

⁹²For a looser but equally worthy and demanding sense of voluntariness, Graham's explanation of the way traditional anarchists understood it is characteristic: 'Implicit in the idea of free agreement is some notion of self-assumed obligation, but it is a concept of obligation which is not connected to any concept of equivalent exchange. Through the process of free agreement individuals publicly commit themselves to future courses of conduct voluntarily chosen by them. The underlying model of obligation then is no longer contract, but promising. ... Kropotkin could argue that the free agreements in an anarchist communist society would not have to be enforced because these agreements would not be contracts of equivalent exchange. Rather, they would be *the public expression of free choice between persons whose relationships are characterized by co-operation and mutual aid* instead of the manoeuvring for competitive advantage found in capitalist society' (Graham 1989, p.165; emphasis mine). This idea of voluntariness is centrally supported by the main lessons of this thesis. Chapter four provides another instance of a weaker implementation of voluntariness, which also preserves its core.

under their control, as being “up to them”. Self-governance seems indispensable at least understood as the capacity to rule one’s own life. This can be characterised as the ability to understand, decide and determine the elements concerning the most important aspects of one’s life and to understand the features of situations that affect it importantly in order to control them. Fundamentally it is a basic capacity to continually secure and determine one’s own survival and moral world, which freedom in its most basic form is.⁹³ Human beings cannot live without it. It secures survival through the exercise of reason as it distinctively characterises human beings. And this involves constraints. Yet it is constraints that one puts on oneself. What is required is not being ruled by another, which might concern both not being subjected to others’ interests and will and, most importantly, not standing in an unequal relation (of power) to others such that generates the possibility of dependence and subjection and undermines one’s status. Coercion in any of these forms stands against freedom. Thus self-governance and equal participation, which pertain to the preservation of proper relations between people, stand together as the most valuable features of the kind of social life suitable to human beings. And voluntarism remains a valuable expression of this idea. We shall see in Chapter Four a different way of stressing it.

At the same time, the conditions of generality, particularity, content-independence and bindingness can hardly be dismissed as inappropriate or demanding. Far from being confined to an anarchist conception of legitimacy, they are reflections of the political nature of the obligations examined in this thesis and they are accepted by many theorists, with different and even opposing convictions, as a reasonable and suitable test. Their formality does not undermine the strength of the normative implications that these conditions create in combination with the moral ground of political obligation discussed in the present chapter.

⁹³Irrespective of any specific conception of freedom, its importance for human beings can be comprehended simply, yet adequately, through an understanding of this basic form. Rousseau’s view of why freedom is not alienable provides, I think, such an explanation. According to Rousseau freedom involves an immediate sense of responsibility and the capacity to control our own decisions and is something that we care about as much as we care about our self-preservation, it is that basic capacity through which we can protect the fundamental elements of our being (e.g., 1762, book 1, ch.6). On the whole, it constitutes part of ourselves and renouncing it would be to be deprived of any guarantee of the protection of anything essential to us, thus to renounce our own nature.

These considerations lead to a final thought. In the previous chapters I referred to an *ideal of legitimacy*, which is part of critical anarchism as a complete philosophical position. Some of the critical force of this form of anarchism has been demonstrated by the preceding arguments. In the same manner, the ideal of legitimacy to be provided as a positive contribution of critical philosophical anarchism finds its initial elements in the considerations incorporated in the present chapter. The proposal is that the central feature of voluntarism, while being the cause of the failure of this theory *as a defence of the authority of the state*, nevertheless qualifies as *a feature which could characterise centrally the interpersonal relations of a society which constituted an ideal of legitimacy*. That is, attempts to ground political authority on voluntariness have failed, yet the value of choice remains and a pattern of voluntarist social relations provides a guiding model of legitimate society. Present polities aspire to, but fail to exemplify such an ideal.

Some critical, philosophical anarchists begin from such a voluntarist picture of societies in developing their arguments against the state.⁹⁴ The anarchist arguments examined in this chapter and the insistence on the conditions of political obligation which they involve become an indication of the prior anarchist consideration that the voluntarist kind of specific interaction which existing institutions fail to involve is a valuable feature of a morally acceptable social life. Thus, voluntariness is at the same time *a desirable element for the construction of what would be an acceptably complete theoretical attempt to justify political obligation* and central characteristic of what would be a *legitimate* society.⁹⁵ I will therefore regard it as a useful criterion to be taken into account, along with the traditional conditions of validity, in a theory of political obligation, and I will argue in Chapter Five about how it can be important for further justifications of coercion.

⁹⁴See, e.g., Simmons 1979; 1996; 1999.

⁹⁵To reiterate, the combination of the four conditions of political obligation with this moral criterion becomes a first instance of what a positive account of political obligation would be like. Also this combination reflects at the theoretical level what at the social level would be the basis of proper social relationships, namely the application of a morally significant feature of specific interaction as the central characteristic of the relationship of government (in this case, the actual consent or choice of each individual). Without totally dismissing quality, this picture of what would be a successful voluntarism incorporates 'transactional evaluation' as the appropriate test of political obligation (see: Simmons 1999; my introduction, section 1).

To conclude, the criticisms analysed in the present chapter provided a confirmation of the importance of voluntariness as a condition to be respected and reflected in an ideal of political legitimacy. This condition, when used for their own purposes, leads to the failure of theories of general political obligation (or, of the authority of the state) and, in this, motivates a different outlook to social relations and to what is to be regarded as a legitimate form of political organisation. Its role as involved in the anarchist criticisms becomes a first indication of a positive and comprehensive outlook reflected in the anarchist perspective. Most importantly, it expresses the anti-authoritarian impulse which anarchism contains, the idea that there is always a complaint against the sacrifice of individual self-determination and of the relations of equal participation which determine the quality of human interaction.

Chapter Three. An Anarchist Critique of the Rawlsian Idea of a Natural Duty of Justice.¹

In this chapter I focus on the anarchist criticism of a deontological theory of *good reasons* for political obligation. More precisely, I criticise attempts to ground political obligation on a Rawlsian conception of natural duty. This criticism is not aimed at Rawls' theory, but rather at the appeal to his natural duty of justice as a basis of a general obligation to obey the state. The reason for concentrating on this form of natural duty is the fact that the dominance of Rawls' *Theory of Justice* in political philosophy has placed his notion of the 'natural duty of justice' at the focus of the debate on political obligation. Yet, while for Rawls this idea, and other 'principles that apply to individuals',² are an essential part of his theory, the establishment of a general political obligation on its basis is not central in this theory, nor does it directly determine its success. Thus, in this chapter, I address the following criticism only to whoever might want to adopt the Rawlsian notion of natural duty as the foundation of an, allegedly, adequate theory of political obligation. But I do not claim that Rawls himself is committed to such an endeavour.³

There are, however, connections between the basic elements of Rawls' theory as a whole and his notion of natural duty. These links preclude the development of a theory of political obligation in terms of the latter in

¹The discussion in this and the following chapter concerns only deontological accounts of political obligation. I do not criticise utilitarianism, although this theory has serious problems when taken as an account of political obligation. For these problems, mainly the difficulty for utilitarianism to satisfy the particularity and bindingness conditions of political obligation and to be compatible with the demands of justice, see Simmons 1979, pp.45-54; Wolff 1996a, pp.53-60; Horton 1992, pp.54-70. This limitation does not affect the main argument of the thesis, since the criticism of natural duty in this chapter renders conclusions about the importance of particularity and justice for theories of political obligation similar to those derived from a criticism of utilitarianism. They are conclusions that centrally affect theories of good reasons, to which utilitarianism also belongs, and it is on this matter that I focus this discussion as part of an examination of a different perspective on the problem of justification of political institutions.

²For these principles, see Rawls 1971, chapter VI.

³Although Rawls' normative claim in *A Theory of Justice* could be a basis for attributing such an attempt to him. He writes: '... there are several ways in which one may be bound to political institutions. For the most part the natural duty of justice is the more fundamental, since it binds citizens generally and requires no voluntary acts in order to apply' (1971, p.116). Yet he makes clear statements in his work that he does not provide a general theory of political obligation (e.g., 1958, p.71, n.22).

complete abstraction from the former. This becomes clear, for example, in the argument from particularity analysed in sections 3.2.2. and 3.2.3. In this argument, reference to a central part of Rawls' theory is necessary if one is to clarify the force of the criticism of natural duty suggested by the particularity condition. Thus, in the following section, I provide a brief presentation of the basic elements of Rawls' theory as they relate to his formulation of natural duty.

3.1.Rawls' theory and the natural duty of justice.

Rawls' *Theory of Justice* is a paradigm of contemporary contractualism. It makes use of an individualist account of rationality similarly at work in Hobbes' contract theory of political obligation, but, more centrally, it aspires to capture considerations of fairness, as a theory which 'generalizes and carries to a higher level of abstraction the familiar theory of social contract'.⁴ That is to say, Rawls advances a theory which draws on social contract tradition in order to clarify the concept of justice as fairness, where contract takes the form of hypothetical agreement the object of which is the first principles of justice.⁵

The theory of justice proposed by Rawls consists mainly in, first, a methodological framework which includes his device of the 'original position',⁶ and, secondly, a view about the content of justice as captured in his two

⁴Rawls 1971, p.11. For Hobbes' contractualism, see chapter two.

⁵Rawls 1971, section 3; 2001, p.16-17. In its formulation, Rawls' theory draws significantly on Kant's contractualism. Rawls himself claims affiliation with Kant in certain fundamental structural features and elements of the content of his theory, such as the distinction between the Reasonable and the Rational, the priority of right, the role of the conception of the person as free and equal and its accordance with Kant's notion of autonomy (for this resemblance, see e.g. Kant 1793, pp.79-81; Rawls 1971, section 40 and pp.251-257; 1980; 1985, esp. p.395; 1993, III, 2; 2001, pp.14-18). These aspects of Rawls' theory are indicative of its character as an example of a contemporary development of the theory of social contract, where the idea of conceiving hypothetical contract as a moral route for deciding the content of morality, justice and/or legitimacy and the role of reasonableness in this, are central. For this understanding of contractualism, see chapter two and the discussion below.

⁶See, for example, Rawls 1971, section 4, pp.118-150, 251-257, 187, 264; 1993, pp.22-28 and 304-310; 2001, pp.14-18 and part III.

principles of justice.⁷ These two parts to his theory constitute Rawls' liberal proposal as a basis for a just political organisation.

In this chapter I concentrate on a discussion of Rawls' *original position* and its relation to the problem of political obligation. This contractualist framework provides the formulation of good reasons in the manner of a hypothetical contract argument. Thus conceived the contract is a conceptual device which helps to show how the idea of fair agreement, which Rawls adopts for explaining how to specify the terms of social cooperation, justifies the principles of political justice that constitute those terms.⁸ This hypothetical contract device is characterised by various stipulations regarding our reasoning on how the parties participating in the agreement are to be situated and on what restrictions are to be made with regard to the knowledge and reasons they have and are deprived of, so as for the agreement to be 'fair and supported by the best reasons'.⁹ Thus the political principles are supported by an agreement which is worked out deductively, rather than being a historical and actual covenant. It is an agreement which represents reasonable considerations under due reflection. The original position is 'a theoretical structure' used to represent 'the fixed points of our considered convictions' about social justice;¹⁰ a device of representation which 'models our convictions' about 'fair conditions of agreement' on political principles and about 'acceptable restrictions on reasons' we give for these principles.¹¹ As such it is proposed as a proper philosophical basis for evaluating, or choosing, principles for political institutions and principles for individuals. It is

⁷See, for example, Rawls 1971, section 11, section 13, chapter IV; 1993, pp.4-11, 229, 237, 282, lecture VIII: sections 1-2 and 5-9; 2001, part II.

⁸Rawls 2001, pp.14-18.

⁹Ibid. p.17.

¹⁰Rawls 1971, pp. 579-580. According to Rawls, '[t]he original position serves as a mediating idea by which all our considered convictions, whatever their level of generality - whether they concern fair conditions for situating the parties or reasonable constraints on reasons, or first principles and precepts, or judgments about particular institutions and actions - can be brought to bear on one another' (1993, p.26). In relation to this, see also on Rawls' idea of 'reflective equilibrium' (1971, pp.19-21, 46-53, 578-86; 1993, pp.8, 28, 45, 72, 95-97, 381f, 384n, 388 and 399; 2001, pp.26-31, 66-72, 134, 136) and further developments of it by Daniels (1979) and Klosko (2001, section I).

¹¹Rawls 2001, pp.17-18. Rawls revises his conception of the original position as follows: 'the original position is to be understood as a device of representation. As such it *models our considered convictions as reasonable persons* by describing the parties (each of whom are responsible for the fundamental interests of a free and equal citizen) as *fairly situated* and as *reaching agreement subject to appropriate restrictions on reasons* for favoring principles of political justice' (ibid. p.18, emphases mine).

these so called principles for individuals which include the natural duty of justice.¹²

From the perspective of the debate on political obligation Rawls' main account¹³ is found among his discussion of 'natural duties', which 'apply to us without regard to our voluntary acts'.¹⁴ More precisely, in his idea of 'the natural duty of justice',¹⁵ defined as 'the duty ... to support and to comply with *just* institutions that exist and *apply to us* [and which] also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves'.¹⁶ The arguments below are developed around this definition of natural duty as a theory of political obligation, and, more precisely, around its first part. The idea here is that if the basic structure of society is just, or reasonably just,¹⁷ then we all have a natural duty to do our part in supporting and promoting the existing scheme independently of any voluntary commitment on our part. The basis for obligation is justice, not voluntary acquisition.

¹²Amongst other natural duties and the obligations of fairness which Rawls acknowledges. See 1971, pp.114-117, 333-337.

¹³Rawls refers also to the obligations of a limited and well-placed group of citizens, those, for example, 'who are best able to gain political office and to take advantage of the opportunities offered by the constitutional system' (ibid. p.344). For Rawls, the basis of such obligations is voluntarist (and is accounted in terms of the 'principle of fairness': ibid. pp.114, 116, 344). For an analysis of this principle of political obligation, see the following chapter of the thesis. Yet, for reasons such as those examined in that chapter, Rawls does not consider that the principle of fairness can be used to explain a general obligation to obey the law.

¹⁴Ibid. pp.114-115. The points Rawls makes about his interpretation of 'natural rights' in 1971, pp.505-506: note 30, provide an important step towards a better understanding of what he means by the notion of 'natural duty'. He connects the term 'natural' with the attributes which are ascertained by natural reason as naturally belonging to *persons*, independently of social and legal conventions, and which are given *special weight*. He also uses the term to distinguish the rights and duties identified by his *Theory of Justice* from those defined by law and custom. I take it that the two features connected with the 'natural' here are central to the Rawlsian definition of natural duties.

¹⁵1971, pp.115-117, 333-337.

¹⁶Ibid. p.115 (emphasis added).

¹⁷As Rawls himself stipulates 'just, or as just as it is reasonable to expect' (ibid.), since no existing institution is stably perfectly just. The arguments provided in this chapter apply also to what Rawls calls 'nearly just' institutions, since he considers his theory of natural duty to be justifying both 'just' and 'nearly just' institutions (ibid. pp.351, 363). Here I focus only on the just ones, as we should see the effects of the present criticism on the ideal case first in order then to decide those effects on institutions which fall short of the ideal. Presumably, the effects on nearly just institutions will be of the same character as those on just ones, although more severe, and problems with the definition of the former do not play a central role in the present discussion.

The argument of this chapter draws the limited conclusion that an alternative in terms of good reasons for political obligation fails as much as consent to justify this obligation: the natural duty of justice does not qualify as a ground of political obligation. Yet, this argument reveals implications for our evaluation of political institutions which have not been derived before. The consideration of Rawls in relation to the anarchist criticism from particularity illuminates these implications and what they show about the role that the anarchist position plays in understanding our relation to political institutions. The Rawlsian account of our duty to obey raises an interesting problem. It brings to the fore a focus on good reasons as a basis of political obligation. Such a focus departs from voluntariness as affirmed by the anarchist criticism in the previous chapter. Yet in being a theory of hypothetical consent the Rawlsian account of natural duty still preserves a significant appeal to self-governance. In both these aspects, it helps the argument developed in this thesis by providing further insight into what the role of institutional qualities is in justifying political authority and into how this relates to the role of specific interaction. Most importantly, it brings to the fore the fundamental anarchist positions about the value of consent and the problematic character of political constraints.

3.2.An anarchist criticism of the natural duty of justice.

The anarchist criticism in this section may be separated into interrelated two parts: first, arguments against taking the *justice* of the institutions as a reason for obedience and, second, arguments about the relation of the Rawlsian natural duty to the *particularity condition*.¹⁸ I shall deal with each in turn.

3.2.1.Against the justice of political institutions as a ground of political obligation.

Appealing to the *just nature* of political institutions as the basis of political obligation is what makes theories of natural duty such as Rawls'

¹⁸Namely the requirement that an account of political obligation explains the special relationship between persons and the particular government of their country of residence.

theories of institutional morality. By definition, such theories focus on the moral qualities of institutions in order to establish political obligations.¹⁹ But, can the justice of an organisation ground a general obligation to obey the law?

The problems which stand in the way of such a conception of our political duties arise from the consideration that just or good legal systems might provide grounds for obeying their laws and for distinguishing them from bad systems and yet not create political obligation. In what follows I shall argue that the sufficiency of justice as a ground of political obligation is questionable.

Raz's discussion is representative of the anarchist criticism at this point. As Raz has pointed out, the substantial functions of the law, which are reflected in two main 'legal techniques', can be evaluated by appeal to certain general reasons for action which underlie those techniques - reasons which nevertheless do not suffice to establish general political obligations.²⁰ The first technique provides legal sanctions as useful prudential reasons for obedience, in such a way as to support the respect of valuable moral duties. Either negative duties, like the avoidance of harm, or positive duties, like the provision of aid. The second technique provides 'publicly ascertainable standards' which help to guide the social behaviour of officials and the active contribution of citizens for the preservation of 'worthwhile forms of social co-operation', in so far as these officials and citizens accept the independent moral reasons which underlie the standards in question.²¹

These connections might show how general moral reasons, and in our case the fundamental duty of justice, might explain the moral acceptability of certain political functions, but they do not generate any special relation of political obligation. The prudential grounds which constitute the first technique might be appropriate ways of securing valuable moral duties. But it cannot be

¹⁹Namely, they concentrate on the character of political institutions, on general moral virtues of them (such as justice) and moral accomplishments of them for their subjects as a whole (such as promotion of social happiness), rather than on any elements of specific interaction between them and individuals (such as the giving of consent). For some first considerations on the role of quality as an aspect of the evaluation of institutions within the debate on political obligation, see Simmons 1999; my introduction and chapter two.

²⁰1979b, pp.246-249.

²¹Ibid.

taken for granted that they are the only ways of doing so and in virtue of their political character: individuals' sense of duty and of their responsibility to others might themselves provide stable motivations for respecting these duties, without the need of coercive measures. But, more importantly, if such duties have a real moral value then it is on the force of this value that we should concentrate as the direct reason for support and see what kind of justification this provides. That the reasons for support lie in the value of these primary duties might make various, political or non-political, ways of administering them morally acceptable but it does not define the necessity of any specifically political means of enforcement and of a specifically political obligation to them. The natural duty of justice is more clearly emphasised by the reasons underlying the second technique which represents functions of the law. Yet, the observations concerning the first technique provide the foundation for an estimation of the role of the standards provided by the second technique.²² Crucially in the present case, it is part of the character of political institutions that legal sanctions play a central role in sustaining moral reasons. But my objection here is that there is no necessary principled and empirical connection between this political character and the sustaining of moral values within society. On this basis, my objection in the case of the standards provided by the second legal technique is that the reasons underlying that technique are *moral reasons* for action which work independently of the existence of any political requirement on action.²³ It is the force of the morality of these reasons and their acceptance by those whose behaviour they are to determine that generate obligations. The morality which makes these reasons strong and acceptable bases of action does not derive from the political character of their enforcement, nor does it exclusively authorise political techniques even when such reasons are facilitated by them. Thus it deprives these reasons from being grounds of a specially political obligation. Pertaining to such moral reasons, the natural duty

²²The prudential grounds of the first technique which support the moral duties underlying it stand in interaction with the standards which affirm the grounds underlying the second technique and should be compatible with them in the way they both characterise the system. Their role is relevant to the present focus on natural duty as a moral reason and primary ground of political obligation. In general, prudential grounds provide additional motivational support of moral reasons.

²³See Raz 1979b, p.249. In relation to this argument, see also introduction note 11.

of justice does not indispensably require publicly ascertainable standards of the kind imposed by the state and does not define a duty special to them.

Nevertheless, there might be appeal to the existence and value of good laws on which the character of a political system is founded, or, by which it is expressed, as a reason for supporting any further laws which contribute to the preservation of the good ones and thus as requiring general obedience for this system to be respected. This is an appeal to the moral 'argument from setting a bad example'.²⁴ It is the argument that known disobedience to certain (even bad) laws on the part of some individuals will badly affect other individuals' conformity to good laws or to a good legal system as a whole. Therefore only general obedience to any law can preserve and thus respect good laws. Raz seems right that this argument is inadequate as a ground of general political obligation. Disobedience is undetected in many cases and, most importantly, it does not always set a bad example encouraging offences against good laws. In fact disobedience to bad laws could encourage improvement of a system and enforce conformity to it. And the known violation of good laws can invite disapproval on the part of those individuals who engage in a reflective assessment of their value. Individuals can support good laws on the basis of their own evaluation of them, without the need for a general requirement of obedience to affect their reasoning and behaviour. These observations indicate that the argument from bad example lacks generality. That is, it simply does not apply to various cases of legally evaluable actions which must be shown to be such by a theory of political obligation. The relevance of this criticism to the natural duty of justice lies in that the argument from bad example can apply to *just* laws, since they are a paradigm of goodness which might be expressive of a system. The qualified argument falls prey to a similar objection: disobedience does not provide a bad example generalised enough to hurt a just system and thus violate the requirement of the natural duty. It follows that the natural duty of justice fails, in a similar manner, to combine the duty to support just institutions with the generality condition of political obligation.²⁵

²⁴See Raz 1979b, pp.237-241.

²⁵Ibid. p.241. To remind the reader, the generality condition is one essential link between a moral ground and the political character of political obligation and the two are constitutive

The above remarks suggest that the just character of an institution does not provide a *sufficient* ground for political obligation. The arguments from justice just examined fail to conjoin it with the essentially political character of this obligation. The conclusion reached so far finds expression in John Simmons' statement that while morality means that 'just institutions are the sort that ought to be promoted (for a variety of reasons), ... it is this fact alone that is expressed by a duty of justice'.²⁶ Thus, 'the mere justice of an institution ... is insufficient to derive a moral requirement to comply with and do ones part in that institution'.²⁷ In other words, although justice is a necessary pre-condition for grounding political obligation, it is insufficient as a ground of such an obligation.

Jeremy Waldron gives an explanation of how the demands of justice involved in the natural duty account should be understood which might facilitate an effective reply to the preceding objection.²⁸ When examining justice as a significant condition of political obligation, amongst others, Waldron proposes that it is important to understand justice as a moral imperative. For this, it is not enough that we ensure that the institutions we happen to have are just. Rather the natural duty of justice means that 'the demands of justice [ought to] be pursued *period*' and is satisfied only when we do our part to *establish* just institutions.²⁹ In this light, the demands of the natural duty of justice invite a sense in which an institution can be just which Waldron considers both to be different from the one adopted by Simmons and Raz in their criticism of the natural duty of justice and to be substantive enough to establish political obligation in terms of such a duty. According to Waldron's understanding, an institution 'can be just in the sense that it is doing something that justice requires' and not in the sense which he attributes to Simmons, namely that it is 'just in the way it operates'.³⁰ This

elements of a satisfactory account of our political bonds. The combination of all the four conditions of political obligation is expressive of the political character of such an obligation. For this, see the introduction of this thesis, section 1.

²⁶1979, p.154.

²⁷Ibid.

²⁸For this analysis see Waldron 1993, pp.27-30.

²⁹Ibid. pp.28-29.

³⁰Ibid. pp.29-30. This latter sense can be derived from Simmons' explanation in 1999, pp.754-755. Also it can be understood in terms of the elements involved in Raz's discussion of good and just institutions, namely in terms of techniques that constitute a system's substantive

means that an institution is just, not when its internal operations are just without it being important from the point of view of justice that we assist them, but rather when it responds to the demands of justice. That is, when it is a matter of justice that it has its practices realised. And since the demands of justice are overriding, whenever present in an institution they facilitate an explanation of our bonds to that institution *in terms of natural duty*.

However, this argument does not help to deflect the preceding criticism. The requirements of justice may be imperative and to this extent affect the evaluation of, and our allegiance to, an institution which satisfies them on purely moral grounds, without any essential reference to its political features. In this way, their importance is asserted through morality, but this does not mean that such requirements entail (or just, are) political obligations. For this, it has to be shown that only a political organisation *qua political* is effective and appropriate for realising these demands, which is what the anarchist doubts. The anarchist conclusions reached above still hold, namely that the moral value of justice might ground the acceptability of an institution but it does not on its own generate a moral requirement to comply with the institution. Waldron provides an account of effectiveness and legitimacy which he sees tied to the natural duty theory as a reply exactly to this objection. I will examine his argument in the discussion of particularity in the next section. For now, the point made is that the value of justice cannot by itself ground a special relationship of obligation to political institutions. This point is reinforced when the natural duty of justice is tested against the particularity condition.

The main upshot of the above considerations on the role of justice in an account of political obligation can now be stated. Justice makes strong moral claims on us. Such demands, however, do not derive from the political status of any institutional organisation which may make them. They thus constitute general moral requirements and they generate approval of the *quality* of any form of social order that reflects respect for them, but they cannot provide a *sufficient* defence of political obligation. Furthermore, the arguments for this

functioning and in terms of its containing just laws expressive of its character (Raz 1979b. See the discussion of these elements above).

conclusion show that anarchism recognises the importance of the demands of justice in a society. The main anarchist claim, for which the present conclusion provides support, is that the state is not essential to the satisfaction of these demands and that, therefore, the demands of justice do not legitimate the authority of the state, nor do they establish the necessity of its existence.

These claims form the basis of the argument I want to advance in this chapter. Significantly, they reveal the following points. The demands of justice can, in the end, ground the acceptability of certain forms of government, distinguish bad from good governments and also serve as criterion for avoiding excesses of power. But this is not enough for settling the problem of obligation to political institutions: good reasons constitute sufficient justification of institutions, if we understand by this that they are legitimate forms of social organisation, but not of our obligation to the state. The anarchist view expressed in the present criticism reflects an approach which *goes beyond* a concern with justifying the legitimacy of political constraints, which is a concern with putting limits to political institutions within a background where they are generally accepted as a given. For such an approach, an understanding of the proper role of general moral values in an assessment of political institutions is crucial. And the present demonstration of the lack of connection between one such value and the special political nature of those constraints provides the first step in this direction. Political constraints are exclusive and inevitable in nature and the failure of general moral values to ground political obligation to them as such directs us to a different use of those values in an attempt to evaluate political institutions, one primarily determined by this special nature.

3.2.2.The argument arising from particularity.

Granted the above considerations, the most prominent criticism against the Rawlsian natural duty of justice as an account of political obligation concerns its relationship to the *particularity condition* of political obligation. This criticism focuses on the observation that the duty to support just institutions does not explain the particular relation of each citizen to his or

her *own* polity. It rather facilitates support of every system that is just, whenever that be possible.

These points are supported by an extended argument made by Simmons.³¹ He asserts, firstly, that the theory of natural duty lacks a 'strong sense of application', namely one which is generated by actions that make an individual 'an active participant', when, for example, one explicitly consents. My arguments in Chapter Two showed that explicit consent constitutes a genuine expression of initiation of and participation in a particular relationship, even though existing polities fail to obtain it. And it is an element which is lacking in natural duty accounts. Secondly, Simmons claims that the natural duty satisfies only a 'weak or territorial sense of application', one holding, for example, when we 'live in an area in which [the rules of an institution] are enforced', which, not being morally significant, cannot establish 'a genuine duty'. It is important to note here that this claim is merely that a theory of natural duty can satisfy only this weak sense of application. It is not to be interpreted as a claim that Rawls himself appeals to such a weak notion of application or that it is consistent with his theory as a whole. In fact, he doesn't, since his contractualism is 'an idea of reason' (to echo Kant's phrase) rather than an actual recipe for legitimate government.³² Thirdly, Simmons argues that, while theories of consent or of 'fair play' implement the strong sense of application, their use in order to supplement Rawls' theory of natural duty would condemn the latter to the violation of the generality condition which these theories suffer. The anarchist criticism developed in this thesis shows that neither consent nor the principle of fairness are sufficient to

³¹The quotations together with the components of this argument as presented here are taken, or derived, from Simmons 1979, pp.150-156.

³²Kant 1793, p.79. This observation attacks a stronger formulation of the present objection as part of the criticism from particularity. In that formulation the claim is that an appeal to Rawls' phrase 'apply to us' as an indication that the duty addresses the inhabitants of a particular community is *an arbitrary move*: it focuses on 'practical considerations', concerning the proximity of each state to the members of the society which it governs, as an important reason for obedience (Horton 1992, pp.104-105; Simmons 1979, pp. 154-155); such a focus works in defiance of principled considerations, which in fact constitute the proper basis of any attempt to combine particularity with justice. In general, the inclusion of the 'application clause' in a natural duty theory seems illegitimate, mainly because it renders the *justice* of an institution irrelevant to a justification of our political bonds (Simmons 1979, pp.153-156). The position of natural duties within Rawls' theory, especially their relation to his original position as a method of hypothetical contract as specially conceived by Rawls, enables his theory to avoid this problem. For this, see the discussion of the role of the original position with regard to particularity in section 3.2.3. below.

generate political obligation for most of the individuals in existing societies.³³ Also, such a supplementation is illegitimate, since it grounds ‘a quite different sort of moral requirement’, obligations rather than duties. According to Simmons, a significant difference between obligations and duties is that the former correlate with “rights on personam”, namely ‘rights which are held against a specific person, and are rights to a specific performance or forbearance’ while the latter correlate with “rights in rem”, namely ‘rights which are held against all other people’.³⁴ The morality of the natural duty of justice secures only the latter and in this creates no connection with the particularistic character of political obligation, to which consent and fairness adhere. Finally, Simmons argues that only the strong sense of application, with its ‘personal transaction’ element (which is essentially voluntarist; see the first point of his argument here), can meet ‘the particularity requirement’ as an essential condition of political obligation.³⁵ Thus, Rawls’ idea of natural duty, indeed, any duty-based theory, in violating the particularity condition, fails to ground political obligation.

In response to this type of argument, Waldron has proposed a strategy for reconciling the Rawlsian, duty-based view, with the particularity condition. Waldron concludes that ‘an organization which is just, effective and legitimate [establishes] ... the moral requirement that we support and obey such an organization not itself based on any promise that we have made’.³⁶ Here I want to examine the steps leading to this conclusion.

A first step is to establish that principles of justice can be ‘range-limited’, namely such that there can be a set of persons who can be distinguished as those whose conduct, claims and interests it is the point of these principles to deal with, so that they are considered as ‘insiders’ in

³³See chapters two and four.

³⁴1979, p.15.

³⁵This point is central in the anarchist perspective on political obligation. It expresses the idea that only morally significant features of specific interaction, those involved in transactional evaluation, can establish the particular moral relationship which political obligation requires for its actuality (Simmons 1999). One of the main aims of my examination of the anarchist criticisms is to see whether this claim is justified. Chapter two has given an affirmative answer. The arguments of this chapter (and chapter four) make a more decisive step in this direction. They also help to complete the considerations introduced in the previous chapters with regard to deciding the role of quality for political obligation.

³⁶1993, p.27.

relation to them.³⁷ On this basis, principles of justice can be seen to demand special allegiance from the insiders and thus be particularly applied to them as opposed to 'outsiders'. We need an argument which shows principles of justice to be range-limited such that it avoids mere appeal to the weak notion of application described above. For this, Waldron appeals to Kant's argument. Thus we need to examine whether it gives a solution to the problem. The argument³⁸ is that the decision to enter political society is not an open question because if individuals are so situated that they are inevitably close to certain others and thus have a claim to the same resources, conflict and violence will be inevitable even if those people are good natured and reasonable. Disputes will arise about the possession of the same resources and people will still disagree about what seems good and just to each regarding the use of those resources. So in order to avoid conflict and the suffering it entails people should quickly enter a form of society with those with whom it is more likely to see their interests to compete, namely with their near neighbours. In this way, the principles which are to define their relations are range-limited in the sense that they are the 'basis for settling those conflicts which are immediately unavoidable'.³⁹

It is doubtful however whether this is a satisfactory argument. The appeal to conflict shows a way of defining particular application which lies in external circumstances rather than in a principled connection between justice and the generation of particular relations. Thus it seems to operate the weak notion of application, rather than the strong one which provides a direct principled basis for distinguishing insiders from outsiders. Nevertheless, in order to decide whether the sense in which the argument identifies the demands of justice as range-limited is a strong sense and whether the argument can establish a demand of special allegiance to political institutions, we need to examine it further.

³⁷Ibid. p.13.

³⁸For the following analysis of this argument, see *ibid.* pp.14-15. This argument appears in the prudential reasoning of Hobbes with regard to human nature and the necessity of the state (1651) as well as in Hume's account of justice (1739-40, book III, part II). But here it takes a special form which draws attention to prudential considerations only as part of the demands of justice, which is more clearly represented by Kant's view (see also Kant 1793, pp.79-81).

³⁹Waldron 1993, p.15.

At this point we can see how the Kantian argument works with regard to the administration of principles by institutions. In the case of political institutions, the claim is that a range-limited application of principles is possible if we see that the insiders are those who are constrained to accept a principle of justice and then to accept secondary principles which accompany it - for example, principles which require individuals to accept its supervision by a specific institution which embodies its demands - while the outsiders are those who are constrained only to not interfere with this administration.⁴⁰ And an institution will be able to administer a range-limited principle of justice if most of the people to whom it applies accept these secondary principles and most others accept the principle of non-interference. But for this to work we need to establish that people are *actually bound* to the institutions which claim to have this role.

For Waldron, this can be provided by the satisfaction of a test of legitimacy.⁴¹ According to this test we need to show, first, that the existence of institutions which do justice is significant, secondly, that it is important for there to be only *one* institution doing justice in a territory and, thirdly, that there are grounds for seeing one particular organisation as appropriate for this purpose.

The first demand Waldron requires to be satisfied by Kant's argument analysed above. But even if this argument was proved to work for the application of principles, there are reasons for doubting its success with regard to the necessity of political institutions. The discussion of social contract in Chapter Two provides the basis for such doubts. The social contract arguments from the state of nature examined there may show that the state is a good solution to problems of security, peace and co-ordination, but they do not establish the state as the only solution. First, they do not provide a proof that the state of nature would make agreement impossible, they rather simply assume this. Secondly, even if it would, there are still proposals in favour of non-political, decentralised forms of interaction which might as well provide the background for resolution of conflicts. It remains an open question which

⁴⁰See *ibid.* pp.15-19.

⁴¹For this and my analysis below see *ibid.* pp.20-27.

alternative will do better, but non-political alternatives have been excluded by state-of-nature defences without proper examination and this shows that their appeal to the state as *the* alternative is very quick. So even if principles of justice could be properly range-limited by appeal to the danger of conflict, their application by political institutions is not necessarily entailed and thus no special relation of obligation to those institutions is justified. The argument does not prove that it is important for the sake of justice that *political* institutions exist.

Yet, it can be argued that political institutions are one important solution to problems of justice and since we are already within their terrain this should suffice for their justification. Even if we accept this argument, it remains for us to examine the replies given to the other two demands in order to see if it can ground political obligation. With regard to the second demand of Waldron's test of legitimacy, his argument is that if we accept that the avoidance of conflict provides a justification of political society then on this basis we can explain why we should have only *one* such organisation. The reasoning here is that if there are more than one organisation there will still be conflict of the same kind in which individuals were involved in the first place: individuals will still support the organisation which serves their own reasons as they understand them and conflict will arise between such organisations as representatives of different claims, a conflict of an even worse kind since the fighting will be better organised. Also given the demands of cooperation, people need an assurance that others follow the same goals with them so as to know that they will cooperate with them and achieve these goals. Such an assurance can be provided by the existence of only one system which determines the goals that people are to share, the ways to achieve them and the cooperation of all. Furthermore, problems of coordination demand a similar solution in order for there to be an assurance that all individuals follow the same of the various possible ways in which they might be able to coordinate (for example, although both driving on the left and driving on the right might be equally acceptable solutions, individuals in the same society need to follow only one and the same in order to coordinate). Both cooperation and coordination are important not only for the avoidance of conflicts but also for the avoidance of injustice itself.

In response to these arguments, one can claim that when society is organised on a small-scale, where people communicate more directly and cooperate for smaller goals without need for centralised supervision and where more general goals might be solved through confederation between the smaller groups, then the need for a single organisation does not seem so urgent. Anarchists support exactly these kinds of social solutions. Theorists and activists disagree about their viability and there might be reasons for doubting that existing societies can afford such a change, but this possibility cannot be excluded on the basis of an assumption that only the state can work. Alternative structures might not be immediately viable but they are possible. What is interesting about this reply is that it resurrects an argument against the state which underlies the defence of alternatives and makes it stronger. The underlying reasoning is that the state might seem important because a focus on the necessity of its existence neglects the fact that it might be the very existence and structure of the state which generates the problems that we are then asked to solve. The state is our reality and it might work well with regard to the problems it is required to solve, yet it might be that it is the very reality of the state that makes it so that it becomes the only visible way of solving problems. We find ourselves in it without being asked and without being presented with other possibilities. The problems the state is asked to solve are identified through the experience within it. Alternative structures might not even identify conflict in the same way as it is identified within the state. In the end, the argument from alternatives works primarily as an indication of the uncertainty of arguments for the necessity of the state. And the arguments to follow show this more decisively.

Even if a final solution to the problems of conflict and injustice favoured the state, there is still the third demand of the test of legitimacy to be examined. And this is quite crucial because the aim of my argument is to show that granting political obligation seems to be the wrong way to go about justification. According to Waldron's argument, legitimacy demands that an organisation be capable of enforcing justice and, for this, that people be *prepared to accept it*, that they can be assured that sufficient others are disposed to comply with the principles of justice in order to think that a particular institution is effective and thus that they are bound to it. The last

step for establishing that a particular organisation is the appropriate one for exercising justice is to prove its salience. And the proposal is that, for proving salience, majority consent, hypothetical consent or hypothetical majority consent can suffice.⁴² Here the idea is that the ground for recognising a particular scheme as appropriate is justice, namely that it embodies the demands of justice. But a good way of establishing this is to use hypothetical (majority) agreement, as an indication that that institution 'may appropriately embody those demands'.⁴³ This, for Waldron is not a consent theory of political obligation. We do not try to show the existence of an actual consent as a basis of obligation but we rather use hypothetical consent as a confirmation of the appropriateness of political institutions in terms of justice. Obligatoriness here becomes a matter of moral background. The natural duty of justice makes justice the ground of obligation and consent is used to distinguish the institutions which embody it. For this, hypothetical majority consent is all that is needed.

In this argument, we can see an appeal to hypothetical consent similar to the one set out in Chapter Two. The focus is on the qualities of political institutions, on good reasons for accepting them. And consent is used as a thought-experiment for conceiving these reasons, as a moral route through which we discover what the best reasons are for supporting principles and institutions. This, however, helps us understand our moral duties such as those of justice but it does not prove an actual relationship to a particular organisation. Anarchists agree that justice is an imperative. And Waldron's test of legitimacy might show that certain institutions are just and thus acceptable on general and imperative moral grounds. But the hypothetical consent can establish only this. This is what the proof of salience amounts to. Hypothetical consent, or hypothetical popular consent (or even popular consent), does not establish a particular relationship between each person and institutions which claim his or her allegiance. General political obligation to particularly one society is not proved. Waldron uses legitimacy in a sense different⁴⁴ to the one used in the debate on political obligation, where it is

⁴²Ibid. pp.26-27.

⁴³Ibid. p.26.

⁴⁴For this, see also Waldron 1993a, chapter two.

seen as the correlate of that obligation.⁴⁵ Still, he argues that the satisfaction of his idea of legitimacy is enough as a basis for accounts of obligation, that it establishes the bindingness of institutions. But what I argue here is that his ideal of legitimacy generates a demand for constant evaluation of institutions in terms of justice rather than a basis for ultimate allegiance to them, which constitutes political obligation.

With regard to Rawls, Waldron himself accepts that his hypothetical consent is 'a model-theoretic device for establishing what justice actually amounts to; it has no political or institutional significance, either with regard to obligation or with regard to legitimacy (in the sense [Waldron is] discussing)'.⁴⁶ Indeed, in Rawls' case it is more obvious how hypothetical consent works as a way of justifying principles for institutions, for discovering the political principles which are supported by the best reasons, rather than as a theory of political obligation. It might still be possible that there is a connection of his theory of natural duty to particularity on the basis of this understanding of the theory. I will examine this possibility in the following section. The point I argue here is that the connection is not provided by Waldron's account. Still, we can see Waldron's defence of natural duty as a departure from Rawls. But, despite his claim on institutional significance, the lesson we learn from that defence is that justice matters for legitimacy and that legitimacy can be understood as a matter of the acceptability of political institutions, of a proof that they can embody and apply justice to a specific society, and of the need to be assessed constantly on this basis. This does not prove that they are the only ones which can do so nor that their range-limited application derives from their political nature. The questions still remain open of whether conflict is the basis for political society and whether a single political authority is justified. And hypothetical consent cannot combine affirmative answers to these questions with its kind of evaluation of political constraints in a way that establishes particularity. The moral importance of justice does not itself make constraints range-limited and the representation of its demands through hypothetical consent does not provide a

⁴⁵For this, see my introduction section 1.

⁴⁶Waldron 1993, p.26, note 46.

salience which generates a special and actual relation binding each individual to his own government. Particularity is still not satisfied.

3.2.3. Rawls and particularity.

Nevertheless, there are considerations coming from a closer estimation of the relation of Rawls' account of natural duty to particularity, which can deal better with the anarchist criticism. In this context Rawls' original position becomes crucially relevant. In the discussion of this framework (in section 3.1.), I stressed that Rawls' contractualist methodology is a device used to model what we regard as fair conditions on agreement and acceptable restrictions on reasons for principles of social justice. Also, that his theory of natural duty is more precisely a hypothetical contract theory of natural duty, since the natural duty of justice to be imposed on individuals is among those principles that would be acknowledged by individuals in his original position.⁴⁷ This shows that an appeal to the Rawlsian natural duty of justice as an account of political obligation cannot disregard the role of Rawls' original position and its connection to the issue. Given these features of the theory we can begin to understand its relation to particularity. According to Rawls, both his two principles of justice and his methodology are designed for a specific form of society: the 'formal conditions on principles', the considerations hidden by 'the veil of ignorance' and other elements relevant to concerns about social justice involved in the original position⁴⁸ include ideas which Rawls believes to be central for citizens who live in societies of a liberal democratic tradition. The original position represents the considered judgements of the citizens of such societies. It is for these societies that Rawls proposes his theory of justice. The construction of the original position tenders a *deontological* version of hypothetical contract as a theory explanatory of what would be considered *good reasons* by reasonable⁴⁹ democratic citizens. The

⁴⁷As Rawls himself claims in 1971, p.115.

⁴⁸See Rawls 1971, pp.146-147. For 'formal conditions on principles' see section 23. For the 'veil of ignorance' see section 24. See also Rawls 1993, pp.22-28; 2001, pp.14-18 and 80-134.

⁴⁹To be reasonable is to take the interests of others into consideration, to be willing to justify or modify your own reasons according to a basis that they can share with you as long as they are similarly motivated. This is reflected in Rawls' and Scanlon's formulation of the motivation of the contractors, by which they attribute to them 'a sense of justice' and a desire

natural duty of justice, along with the idea that we need political institutions for a successful implementation of the requirements of social justice, are claimed by Rawls to deserve reasonable acceptance by individuals in his imaginative position. In this way, Rawls' theory seems to satisfy the particularity condition, at least in principle. Through the hypothetical thought-experiment each individual of a democratic society can assert the considerations which reflect his reasonable viewpoint as such a citizen and the principles affirmed on this basis are the result of the best reasons with which he identifies. Thus, individuals can be seen to have a particular normative relation to the principles chosen for their societies and to be able to extend this relation to the institutions which embody these principles in these societies. The natural duty of justice is based on the reasonable viewpoint that the citizens of societies with a specific character should have and it can determine their social relation to the institutions which satisfy this viewpoint. In principle, the strong sense of application is satisfied.

Yet, it is that this happens only in principle that makes theories focusing on institutional qualities problematic as accounts of political obligation, even when such theories are based on hypothetical consent with its significant representation of self-governance. The normative force of the original position affects first and foremost the acceptability of principles which can then determine the character of political institutions and not the acceptability of institutions themselves. Furthermore, such an acceptability regards the character of political institutions rather than the features of a particular relation of authority. Finally, a definition of what counts as the reasonable viewpoint of democratic citizens differs from an identification of their actual viewpoints. The former constitutes a normative standard for assessing their viewpoint, a representation of the idea of political autonomy, but it does not establish any actual authority unless it characterises their real viewpoint as it actually applies to specific institutions. Rawls' theory might be representative of the general attitude of reasonable democratic citizens of some societies, but this does not prove any application of the specific interaction

to justify their claims to others (e.g.: Rawls 1971, pp.46, 312, 505; 1980; 1985; Scanlon 1982; 1998).

between individuals and between them and political institutions required in order to establish actual political obligations.⁵⁰ It is only when the reasonableness of accepting a natural duty to our just institutions is asserted in the specific tasks they serve for each and every member of their society that a special political relationship can be created. The general justice of institutions may justify their existence and/or desirability but not that they are actually and continually performing their tasks and are accepted.⁵¹ We will have to examine the specific relations between particular democratic societies and their citizens as governed by the principles of justice in order to see whether in their particular case Rawls' theory can establish special allegiance. As it stands, Rawls' account provides general normative constraints of justice for evaluating political institutions in general and as they already exist, it does not serve the purpose of establishing a particular society and its authority.

We can see this to be clearly conceded by Rawls himself: '...in contrast to the various conceptions of social contract, the several parties do not establish any particular society or practice; they do not covenant to obey a particular sovereign body or to accept a given constitution. Nor do they, as in game theory (in certain respects a marvelously sophisticated development of this tradition), decide on individual strategies adjusted to their respective circumstances in the game. What the parties do is *jointly* acknowledge certain

⁵⁰Also, in representing what Rawls thinks as the characteristic reasonable attitude of the democratic citizen in liberal societies, his theory does not examine the considered beliefs of ordinary people who actually live in these societies. So it is not certain that his intuitions reflect accurately those of the public to whom he refers (this observation does not challenge the appropriateness of his abstraction but rather suggests that for the abstraction to be a faithful application of the reasonable which is particular to the culture it addresses it may be necessary that it is more securely connected with the actual reasonable of that culture). For this point see Klosko 2001, section I. To the sets of considered judgments and moral principles which stand in mutual support according to Rawls' method of 'reflective equilibrium' (Rawls 1971, pp.19-21, 46-53, 578-586; 2001, pp.29-32), Klosko adds 'the beliefs of ordinary citizens' and calls his own a 'broad reflective equilibrium' (2001, p.5). This is a further development from Daniels' 'wide reflective equilibrium' (Daniels 1979), which itself extends the logic of Rawls' account by involving also appeal to 'a set of relevant background theories', which underlie and serve the evaluation of competing moral principles (ibid. p.258). Maybe Klosko's appeal to ordinary beliefs should be seen as an 'argument from common opinion', one resting on the authority of common belief, rather than as one 'from coherence', of the kind that Rawls' method is (for this point see Green 1996, pp.2-5). But in the present case, the focus is on the relevance of public opinion for creating particularity, whatever its proper role in a theory might be. To what extent Klosko's and any empirical investigation can deliver true public opinion on complex, normative matters such as political obligation is another issue, which I discuss in chapter four (on this see Green 1996).

⁵¹For this point see Simmons 1999, pp.754-755.

principles of appraisal relating to their common *practices* either as already established or merely proposed. They accede to standards of judgement, not to a given practice; they do not make any specific agreement, or bargain, or adopt a particular strategy. The subject of their acknowledgement is, therefore, very general indeed; it is simply the acknowledgement of certain principles of judgement, fulfilling certain general conditions, to be used in criticising the arrangement of their common affairs. The relations of mutual self-respect between the parties who are similarly circumstanced mirror the conditions under which questions of justice arise, and the procedure by which the principles of judgement are proposed and acknowledged reflects the constraints of having a morality. Each aspect, then, of the [Rawlsian] hypothetical account serves the purpose of bringing out a feature of the notion of justice'.⁵²

Therefore it is concluded that the relation of a Rawlsian theory of political obligation to particularity is this: in principle, Rawls' account of natural duty does not violate the particularity condition. Moreover, when an attempt to base political obligation on the Rawlsian conception of natural duty reflects the centrality and connection of Rawls' original position to the issue, then the attempt preserves, in principle, the prospect of particularity. But the principled support provided for natural duty within such a framework renders no proof of the actual application in terms of natural duty of the moral relationship between citizens and government required for political obligation. The particularity condition for political obligation is not satisfied.

3.2.4. Self-governance and the role of general moral principles.

The above considerations are crucial for the main argument of this thesis. They shed light on the following observations about a significant connection between the role of general moral principles such as justice in defending political institutions and the affirmation of the importance of self-governance, with which I end this section. As argued in Chapter Two, hypothetical consent provides a phenomenology of how individuals can be ruled by themselves and represents a route through which they come to

⁵²1958, p.57.

identify with important aspects of their social world even when they do not actually consent. This nevertheless does not itself ground social relations and duties. The preceding discussion of Rawls confirms these points, now as applied with regard to the demands of justice. Furthermore, as regards the relation of justice to the political discussed in this chapter, this moral value constitutes a criterion for the acceptability of political institutions and can be used along with other such values for moral evaluations of such institutions which do not however depend on their political nature. In the absence of direct expressions of voluntary submission and a transactional application of the demands of justice, political institutions can be assessed in terms of general values in order for us to see aspects of their existence to be appropriate. But this does not generate political obligation. And it does not secure individual freedom unless it is done in light of the defects of political institutions. The results of the debate on political obligation so far show that the exclusive and authoritative nature of political institutions makes them incapable of certain relations and possibilities - such as the kind of interactions that would justify a relationship of political obligation - and this gives us reason to reconsider the way we accept them and let them govern our lives. It indicates the instability of arguments for their necessity. The nature of political institutions is such that within them there is always a point at which self-determination is governed by aspects external to itself. When political obligation is claimed to be defended as a special relationship which gives governments the right to decide the conditions of social life without being challenged in terms of content and degree and to use coercion to back up this function, then the possibility of re-evaluating those conditions is limited. That is why the basic acts of self-assumed commitment and kinds of social co-operation which involve decentralised, reciprocal and equal relations do not sit well with such a duty. In order to secure respect of self-governance, beyond their use for assessing the acceptability of political institutions and for limiting excesses of their power, general moral values can be used as general requirements on institutions which apply constantly and in view of their defects.

3.3.The implications of the anarchist criticism of natural duty.

The implications of the preceding elaboration of the anarchist criticism of the Rawlsian natural duty are as follows:

1) In many cases, the just character of political institutions is a considerable reason for supporting aspects of them that express this character. It also renders them more suitable and possible candidates of political legitimacy. However, it does not qualify as a ground of political obligation. It fails, despite its moral significance, to be a general basis of obligation which comes to terms with the political character of institutions. Thus, the natural duty of justice is guaranteed a privileged position from the perspective of the general debate on morality and on the desirability of constraints, but not as part of a successful defence of political obligation.

2) Failure to satisfy the particularity condition does not necessarily condemn Rawls' account of natural duty, since, his theory as a whole serves aims quite different from the aim to defend political obligation and since, when accommodated to the latter concern, contrary to first impressions, that account is, at least in principle, compatible with the requirement. But such a compatibility does not establish the theory as an account of political obligation. The discussion of Rawls' theory is helpful in that it highlights the significance of the particularity condition as an indispensable part of a theory of political obligation and so justifies the anarchist insistence upon it. The discussion of particularity confirms the anarchist's demand that we need to focus, as the last court of appeal, on the actual and particular conditions which may generate and characterise the relationship of political obligation - with which our concern with values when assessing political institutions is transformed into a direct and substantive assessment of our social world.

In sum: particularity proves to be a hard test for any account which focuses on moral qualities of political institutions. Such accounts provide elaborated bases for evaluating political institutions, for understanding the reasons of their existence and the criteria on the basis of which we can explain our relation to them. But they do not provide the ground for an overall justification of political impositions and for primary determination of the actions of individuals by them. This can be established only on the basis

of the presence of morally important features of specific interaction between political institutions and individuals, as something which substantially and continually characterises social reality. At the same time, whilst justice cannot provide a ground for obeying government, the possibility of attempts to undermine it is restricted by the central role of this idea in morality.⁵³ Justice and every other important moral quality of institutions remain strong criteria for their assessment.

At this point of my study, the role of institutional morality, or quality, within the debate on political obligation becomes clearer. Institutional morality is an indispensable aspect of evaluation of political constraints since the latter cannot be taken for granted and desirable in themselves. In the present case, the justice of institutions plays central role in moral evaluations of our social reality and for imposing principled demands on political structures and practices. Yet, for the specific relationship which needs to apply in order for there to be political obligation, this general quality - and any such quality - is insufficient. Instead, it is how such qualities apply to the interaction between existing institutions and each of their citizens and to the relations between those citizens themselves that matters in creating this special political relationship. The failure of defences of political obligation to combine the moral with the political feature through the four conditions which determine the debate on political authority is indicative of the difficulty of achieving this aim. It is this point that the anarchist criticisms express and which characterises primarily the perspective involved in the anarchist challenge.

The anarchist proposal itself of an ideal of political legitimacy is guided by these considerations, as declared in the conclusions of this and the preceding chapter. According to the conclusions of Chapter Two, a successful attempt to justify political obligation should satisfy the conditions of generality, particularity, bindingness and content-independence in a way that reflects a recognition of the value of voluntariness. This corresponds to the prior anarchist idea of a society that actually involves voluntarist transactions as a paradigm of legitimacy. The new element to be added as a result of the

⁵³Although considerations of feasibility and efficiency might require compromise on the part of considerations of justice, to a greater or lesser extent.

discussion of this chapter is this: justice is a necessary virtue of political institutions. In order to establish their legitimacy, however, this quality must be proved compatible with the main conditions of political obligation, and especially with particularity. At the same time, while justice cannot be secured without at least a minimal level of efficiency, its wholesale sacrifice to the latter deprives an institution from most of its moral character. These considerations reflect another prior vision which determines the anarchist perspective. That is, that a society which would involve the actual distribution of equal rights, opportunities and other benefits - the actual implementation of just treatment - would be legitimately one where the special relationship between the coercive structures which realise these functions and the citizens who consider them their own exists.

Thus, the ideal of legitimacy appears in the form of anarchist proposals that vindicate visions of society which represent prior considerations as to what the aim of the debate on political obligation is. And it is significant that they stress the importance (and difficulty) of insisting on quality, still in a way that reminds us that, for political obligation, this insistence can be meaningful only in relation to actual, particular interaction. The anarchist criticisms bring once more the anarchist perspective and ideals of legitimacy together and thus open the way for arriving at a unified and comprehensive view.

These considerations advance the argument about the problematic character of constraints which distinguishes the anarchist perspective. The demand for a complete absence of constraints might seem an impossible and even undesirable position. We might still have serious reasons for wanting our decisions to be determined by others - a strong need for peace and safety as well as the demands of important moral duties. But in the case of political constraints such reasons do not suffice to justify unconditional allegiance to them. Their coercive character takes a centralist and exclusive form such that undermines not only the opportunity for self-government but the capacity for self-government itself and all that it mirrors about individuals qua persons, who *as such* need and deserve peace and security. Political coercion affects the quality of relations between individuals in a manner and to an extent that it undermines the very basis of an equal standing and free participation. It

violates the very reasons for which institutions are meant to exist in the first place. In the end, there aren't very strong arguments for having a duty to the state as there are for other moral duties and this has significant implications for political institutions themselves.

These points relate to the importance of self-governance and the value of consent which the preceding anarchist criticisms underline. Self-government matters as the fundamental exercise of our capacity to control and lead our own lives without being subjected to arbitrary limitations. And as such it preserves and requires relations of a free and equal character, which reflect a respect for the status of human beings. Self-government does involve being ruled. It involves constraints. But it also involves the expression of a desire not to be constrained. This might seem inconsistent. Yet different ways of attending to self-governance make a difference which explains the compatibility between these two demands. Consent has not proved to be an adequate basis of political obligation but it still remains an obvious way of expressing and exercising personal authority and achieving equal participation. Actual consent secures self-government. It provides an immediate way of realising this capacity. In its absence, it is important that the constraints imposed on us are of a kind which still relates to our capacity for critical reflection and decision making, that they are rooted in *our* decision to be ruled. The unconditional acceptance of political constraints on the basis of their general virtues does not preserve this connection. The failure of quality-based accounts to ground political obligation indicates this problem. Also, it indicates that such accounts should work as a basis for a regular and regularly re-evaluated assessment of political institutions, which is necessary for ensuring the legitimacy of their workings in light of the instability created by the absence of political obligation. Principles such as justice can be used for assessing the merits of institutions and tracing their legitimate power in light of their defects and by reference to the harms of particular persons. So, in the absence of consent and other features of morally important specific interaction, we need to work very hard in order to assure that constraints are compatible with proper social relations and self-governance. Proclaiming political obligation is not the right way to go about justification.

The results of the debate on political obligation show that it is very difficult for institutions to become legitimate. And this motivates a more demanding approach to them. The problem of justification is one beyond applying limitations to institutions. It is rather about *how difficult it is for any state to be legitimised and about highlighting these difficulties*. This perspective is distinctive of the anarchist position.

Chapter Four. The Failure of the Principle of Fairness as an Account of Political Obligation.

In this chapter, I advance an anarchist criticism of fair-play defences of political obligation. The fair play, or fairness, approach constitutes perhaps the most prominent of the reciprocity-based theories of political obligation. From the perspective of this thesis, it is important that the fairness principle exemplifies a condition which makes it a characteristic reciprocal theory, namely 'the idea of proportionality'.¹ This interprets political obligation as a contribution, or burden, proportional to an individual's received benefits. My aim is to examine the limitations of the principle as an account of our duty to the state but, at the same time, to explain the value of its role in the debate. The principle of fairness constitutes a further deontological, good reason for political authority, which is, however, different from that involved in the natural duty of justice examined in Chapter Three. It returns to the active aspect of obligation, from which duty-based theories depart. Significantly, it brings us back to the value of voluntariness, which was defended in Chapter Two. The main argument of this chapter is that the element of voluntary acceptance involved in the principle is of crucial importance to our understanding of political relations and it is the interpretation of the principle which focuses on this feature that I want to emphasise. I also conclude that the fairness account examined below has a limited application: it can determine the character of the procedures which might apply within political institutions (that is, it can function as the condition that the rules of these procedures are fair), but it cannot justify political obligation.

I begin with a presentation of the main features of the principle of fairness as formulated by H.L.A. Hart and Rawls. I then go on to discuss

¹Wolff 1995b, pp.8-9. Yet, with respect to this idea the principle of fairness is distinguished from other reciprocity-based theories such as gratitude in the way they define duties: the former defines the necessary return required from the recipient (as doing his fair share in producing the benefits), while in the latter the recipient decides for himself how to reciprocate (Klosko 2001, p.10). And, more generally, fairness involves more complex relationships between the beneficiaries, determined by the idea that they are active participants in a cooperative structure (Simmons 1979, pp.172-175). I analyse these features of fairness below.

certain elements which appear to be importantly involved in the conception of the principle but which do not seem to me to be integral to its rationale. This will allow for the clarification of their role with regard to the main anarchist arguments against the principle. Finally, I examine those arguments and their implications.

4.1.The principle of fairness.

Hart explains the principle of fairness in this way:

‘When a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to a similar submission from those who have benefited by their submission. The rules may provide that officials should have authority to enforce obedience ... but the moral obligation to obey the rules in such circumstances is due to the cooperating members of the society, and they have the correlative moral right to obedience’.²

As for Rawls, his central formulation runs like this:

‘Suppose there is a mutually beneficial and just scheme of social cooperation, and that the advantages it yields can only be obtained if everyone, or nearly everyone, cooperates. Suppose further that cooperation requires a certain sacrifice from each person, or at least involves a certain restriction of his liberty. Suppose finally that the benefits produced by cooperation are, up to a certain point, free: that is, the scheme of cooperation is unstable in the sense that if any one person knows that all (or nearly all) of the others will continue to do their part, he will still be able to share a gain from the scheme even if he does not do his part. Under these conditions a person who has accepted the benefits of the scheme is bound by a duty of fair play to do his part and not to take advantage of the free benefits by not cooperating’.³

Comments on these two statements are commonplace within the literature on fairness (of which the bibliography used in this chapter is a representative

²Hart 1955, p.185.

³Rawls 1964, pp.9-10.

part). Below I note the aspects of the principle that are most widely regarded as its main features under the two formulations. This will help clarify the formulations themselves. My examination of the arguments for and against the principle of fairness, in the next section, will focus on two central interpretations of it derived from these statements.

The rationale of the principle of fairness is shown by the moral requirement of fair share imposed upon individuals who benefit from the burdensome efforts of their fellow-citizens. More precisely, the principle requires reciprocity in the distribution of benefits and burdens; it imposes 'a duty not to free-ride on the efforts of others'.⁴ Thus, it is connected with the problem of social co-ordination.⁵ More evidently, it is connected with the role played in society by public goods and with the problem of restricting people who demonstrate the exploitative motivations of a free-rider with regard to the contribution of others for the provision of such goods.⁶

In its main function, the principle, as formulated by Hart and Rawls, applies within certain contexts characterised by special circumstances. It works within *schemes of social co-operation*, it involves a *restriction of the liberty* of the parties involved in the enterprise and it concerns the production and preservation of benefits which are *free* in nature.

Rawls' notion of 'schemes of social cooperation' (or, 'joint enterprises' in Hart's formulation), provides a conception of our political communities as

⁴Wolff 1995a, p.92.

⁵For a useful introduction to the problem of social coordination, see Raz 1990, pp.6-11. For Raz coordination, which is a central issue in justifications of political authority, is taken in its ordinary sense: as the problem of '...getting people to act in ways which are sensitive to the way others are guided, or are likely to act, so that benefits can be expected which are less likely if they act without coordinating their efforts, i.e. without basing their own actions on a view as to how others should or are likely to act. Coordination presupposes that people are not trying to foil each other. Rather they are trying to secure goals which are agreed to by all, or perhaps just goals that all should have. But coordination does not presuppose that every participant will improve his position by coordinating' (ibid. p.7). In this ordinary sense coordination does not involve subjectivism (and the related exploitative motivations) as it preoccupies game theory, e.g. analysis of the Prisoners' Dilemma, and which is applied in traditional approaches to the problem of providing public goods (and, in general, to game-theoretical analyses of coordination; ibid. pp.6-11). Still, it involves the basic features which relate the principle of fairness with the problem of public goods, a problem which is in the focus of this chapter. And the problem of public goods is a kind of coordination problem. For more precision, the problem of public goods is one which can arise as a problem of securing social coordination in its ordinary sense, but also one which usually arises in relation to the free rider problem of game theory (ibid. p.8). In this chapter I focus on the latter.

⁶For an analysis of this connection and the relevant problems generated see Arneson 1982, pp.618-623 and Simmons 2001, pp.29-36.

‘cooperative enterprises on a very large scale’,⁷ the members of which share an horizontal relationship of fellow-citizenship and work together for the achievement of common ends. Thus, they owe their political duties, not to the government, but to one another. The ‘restriction of liberty’ condition involves members accepting certain burdens (such as political obligations) corresponding to the benefits distributed by the cooperative scheme in a fair manner.⁸ These benefits are ‘free’ in the sense that they have the features of public goods and so they can be enjoyed by any single individual without his cooperation, as long as a sufficient number of others contribute.⁹ The features of public goods, or ‘open’ benefits,¹⁰ which permit this situation are three in number. First, indivisibility, namely their equal availability to and consumption by all members (their utility for one person does not affect their utility for others), second, nonexcludability, namely the impracticality of their being provided to some members while excluding others from their consumption and, third, the need of the cooperation of large numbers (a public) for their provision.¹¹

There is one more feature of the principle of fairness, which is explicit in Rawls’ formulation, though not apparent in Hart’s, and is related importantly to those analysed above. This is *the voluntary acceptance* of the benefits of cooperation.¹² Although not all theorists of the principle of fairness agree on its importance, this feature exemplifies, in my view, a significant aspect of its rationale. That an important pre-condition for the operation of the principle is the involvement of some voluntary act on the part of individuals when they receive public benefits. Such an act would qualify the individuals as participants in the cooperative scheme where the requirements of fairness, as stated by the principle, apply.

⁷Simmons 1979, p.116.

⁸Ibid. p.105.

⁹On this see Simmons 1979, p.106; Klosko 1987, pp.244-245 and Arneson 1982, pp.621-622.

¹⁰By ‘open’ benefits I follow Simmons in meaning those usually referred to as public goods. They thus demonstrate all the characteristics of public goods described here, especially their nonexcludability, on the basis of which it becomes impossible or very inconvenient to avoid them (Simmons 1979, p.130). From now on I will use this term interchangeably with the term ‘public goods’.

¹¹For the explanation of public goods that I follow here see Rawls 1971, pp.266-270; Arneson 1982, pp. 618-619; Taylor 1982, pp.40-55, 60-65, 117-120; Klosko 1987, pp.242-243 and Harriott 1996, p.120.

¹²Simmons 1979, pp. 107-108.

This feature is contrasted with *mere receipt*, which is, however, advocated by some theorists of the principle of fairness as part of its proper interpretation. Note that a choice between the two interpretations affects significantly the evaluation of the principle as an account of political obligation. It also creates the most serious difficulties involved in such an evaluation. Yet, the notion of acceptance, conceived in its more direct and unqualified sense, clarifies something important with regard to the rationale of the principle. It demonstrates how the principle departs from consent theories of political obligation in an advantageous way whilst preserving its required moral character: it does not require an act of deliberate undertaking, which one is performing under the knowledge that one becomes obligated by it. It rather makes the weaker demand that, in the face of benefits provided by a cooperative scheme, one's (voluntary) acceptance of them is enough to bind one to the scheme.¹³ It thus gives a clear sign of involvement, which tacit consent failed to provide, without needing to infer that it is consent. This seems to increase the possibility of the principle's meeting the generality condition of political obligation. At the same time, acceptance preserves the character of a specific and self-assumed act, which is the most obvious application of an actual transactional basis of the relationship of political obligation.¹⁴ And, more importantly, through acceptance, the core voluntarist aspect which makes consent a significant expression of self-governance is preserved in the principle.

4.2. 'Triviality', 'success' and 'justice'.

Before embarking on the criticism of the principle of fairness, I want to examine some other elements involved in the discussion of the principle. I discuss them separately because, although they create important conditions for the acceptability of the principle, there is controversy among theorists about their centrality. The three elements that I consider in what follows fall under

¹³Simmons 1979, pp.116-117; Horton 1992, p.96.

¹⁴For the importance of such a basis see Simmons 1979; 1999; my previous chapters. In this manner, acceptance also makes the principle of fairness compatible with the particularity condition of political obligation, namely the requirement that the ground of such an obligation should provide a reason for individuals being obligated particularly to their *own* government.

the following labels: 'triviality', 'success' and 'justice'. I discuss each in turn.

i) *Triviality*. The first element is related to the criticism of the principle of fairness provided by Robert Nozick in his book *Anarchy, State and Utopia*.¹⁵ This criticism consists mainly of a series of examples used to support his claim that the principle is not morally valid and that it fails to create political obligations within social schemes characterised by the main features described above. The main elements of his argument will be considered in the discussion of the most important criticisms of fairness in section 4.3. At this point, I focus only on one element, that concerning triviality. It has been pointed out¹⁶ that all of Nozick's examples involve benefits which are of trivial value¹⁷ and that this aspect of them affects substantially the force of his attack on the principle of fairness. These are valid claims. One important condition that should be incorporated within accounts of fairness is that the benefits with regard to which obligations of fairness are created should be *worthy* of the individuals' costs in their efforts to provide them.¹⁸ As we will see later, this condition occupies a central position within Klosko's defence of the principle, and it is given considerable attention by other discussions of it as well.¹⁹ The point indicated here is that, while the core of the principle of fairness lies in its demand of a fair share in the benefits and burdens of a cooperative scheme, its application can be properly evaluated only with respect to goods which are important enough to individuals to support this application.²⁰

ii) *Success*. The second element to be considered is success (or, otherwise, the perfection of cooperation within a joint enterprise). Rawls' formulation of the principle of fairness makes precise, as a condition on its

¹⁵1974, pp.90-95.

¹⁶Simmons 1979, p.119; Klosko 1987, p.246.

¹⁷Benefits such as the broadcasting of entertaining programs in Nozick's 'public address system' example (Nozick 1974, p.93). I will discuss this example in the following section.

¹⁸This point is allowed by a suggestion of Nozick himself (1974, p.94). And it has been stressed by Simmons (1979, p.119).

¹⁹For example, Wolff 1995a, pp.94-96; Arneson 1982, pp.617 and 621-623.

²⁰This said, the triviality condition remains external to the moral core of the principle of fairness. As '[t]he kind of unfairness condemned by the principle is *taking advantage of or exploiting*' 'the good-faith sacrifices of others', the basis of obligation is an individual's free acceptance of a good and not the value or importance of goods (Simmons 2001, pp.29-36). The relevance of the latter lies only in its being more likely to invite the kind of attitude central to the principle and generally to effect its application.

application, 'that the advantages [a cooperative scheme] yields can only be obtained if everyone, or nearly everyone, cooperates'.²¹ Following Simmons,²² I take it that whilst a need for substantial cooperation in a joint enterprise may render free riding more objectionable, e.g., for reasons of efficiency, such a condition does *not* elicit the central requirement of the principle of fairness, it is not part of its reciprocal logic. Participants do have an obligation to cooperate, even under circumstances where many others could fail to do so (that is, when their lack of cooperation does not make the provision of the desirable goods impossible). Although the obligations of the beneficiaries are defined relevant to the benefits and burdens allocated to other participants in the scheme, it is not the necessity of compliance that characterises these obligations. This point is made clearer by an additional observation. In his criticism of the principle of fairness, Smith claims that only the infliction of harm upon the community and/or the deprivation of another individual of benefits proportional (or, according to Smith, 'roughly equal') to those we acquire due to his cooperative efforts generates obligations of fairness.²³ However, as Simmons rightly argues, even when the effects of her behaviour are not negative on someone else's benefits, it is the fact that the free-rider *takes advantage of others*, who do their part, that makes her attitude objectionable in terms of fairness.²⁴ As explained in the discussion of the central features of fairness above, the principle defines obligations as part of non-hierarchical relations between cooperative members. This aspect focuses on the quality of the interaction between individuals who are seen as fellow-citizens standing in horizontal relations to each other, thus on whether the behaviour of some reciprocates the sacrifices of those others who stand in such relations to them or whether it exploits them. I believe that this point is reflected to an extent in Smith's qualification that the benefits of the affected parties should be proportional. But even if my assumption is mistaken, the main point made here still stands. While not completely irrelevant, references to the utility of cooperation alone do not capture elements internal to the

²¹1964, pp.9-10.

²²1979, p.106.

²³1973, pp.956-957.

²⁴1979, note p.

rationale of the principle of fairness. Thus, success is not an essential condition on this principle.

iii) *Justice*. The last, and most important, element I want to discuss here is justice. Rawls indicates that the schemes of co-operation where the principle of fairness applies should be *just*.²⁵ The justice of an institution, however does not directly determine considerations of fair play. The obligations of fairness concern the reciprocal relationships between the participants of a co-operative scheme. Their bindingness is not derived from the moral character of the scheme, and injustice in it - or the violation of utility or, more generally, a scheme's promotion of 'immoral ends' - need not affect the existence of such obligations. It is not the general character of the scheme but the fact that fairness-based procedures take place that matters for considerations of fairness, on the basis of which the rules of fair play can be applied as determinative of reciprocity and citizens are to interact fairly. Also, although the condition of justice may be taken to concern the distribution of benefits and burdens within a co-operative enterprise and, as such, to create a background within which the fairness of the reciprocal relationships of the participants can be secured more easily, the demands of fair play do not necessarily depend on such a background in order to arise. This is because the element which is more directly relevant to considerations of fairness is *proportionality*, not justice.²⁶ This notion motivates a central point with regard to fairness. It makes more explicit the fact that the principle can apply as long as each of the participants is benefited in proportion to the costs (or burdens) each suffers, and that it is this situation which is directly relevant to the principle.²⁷ But this is a situation which does not arise exclusively in a just system.²⁸ Of the two notions in play, it is not justice but proportionality (in the distribution of the relevant benefits and burdens) which is integral to

²⁵1964, p.9.

²⁶For these points see Simmons 1979, pp.110-114.

²⁷This element expresses a concern with creating and securing proper relations between individuals in a society, which, as indicated in previous chapters, is a central concern of the anarchists and the main source of their challenge to political authority. For more on this point, see the analysis of the anarchist arguments in the present chapter (section 4.3.).

²⁸This point is indicated by Simmons (1979, pp.112-114), but it is also compatible with Rawls' discussion of the principle (1964) and with its defence by Klosko, which is analysed below (1987: see, e.g., p.253 the comments connected with note 32 and, more generally, all his references to the third condition he poses on the application of the principle).

the rationale of the principle of fairness.

There is, however, another consideration with regard to justice. The justice of an institution has been accepted in the previous chapter (as a result of the anarchist criticism of the natural duty of justice) as a central feature²⁹ of an ideal of legitimacy to which visions of society must conform. And justice is a significant indication of the bearing and role of considerations about quality, or, institutional morality, within the debate on political obligation. The relevance of this point to the present considerations on fairness is this: although justice is not a feature integral to the demands of fair play, the recognition of its significance in an ideal of political legitimacy functions as an *external* condition on the principle of fairness. By this I mean that although the success of the principle, as the foundation of a theory of political obligation, should be decided by reference to its internal rationale, its final acceptability as a general basis of legitimate authority is not independent of the satisfaction of central demands of justice. Its establishment as such a basis presupposes sympathetic recognition of these demands. Thus, a defence of political institutions on the basis of the principle of fairness should also establish the compatibility of the workings of these institutions with the main demands of justice (as distinctive requirements among other moral obligations).

4.3.The anarchist criticism of the principle of fairness.

Let me turn now to the most important criticism of the principle of fairness as an account of political obligation. This criticism draws upon the problems which the principle faces in meeting the generality condition³⁰ of political obligation. It is active in two areas. The first concerns the inadequacy of the principle interpreted either in terms of 'receipt' or in terms of 'acceptance'. The account of fairness in this chapter focuses on these two interpretations. The second concerns the conception of community, integral to the rationale of the principle, as 'a scheme of social cooperation'.

²⁹Although not sufficient to ground political obligation.

³⁰Namely, that a sufficiently general number of people have political obligations according to an account of our political relationships so as to make it 'at least reasonably general in its application' (Simmons 1979, p.38; see also my introduction, section 1).

4.3.1. 'Receipt' versus 'acceptance'.

4.3.1.i. Objections to understanding fairness obligations in terms of 'receipt'.

The formulation of the principle of fairness advanced by Hart legitimates the interpretation under which the central condition for its adequate application as an account of political obligation is claimed to be the mere *receipt* of benefits. So we have this reading of the principle: when individuals *receive benefits* from a political scheme which is sustained by the obedience of other individuals, they are required, in fairness to those who obeyed, to reciprocate by accepting similar obligations as their proportional share of burdens.

A first objection to this claim is provided by the doubt as to whether existing governments actually provide the required benefits. This involves both difficulties related to conflicting beliefs about what these benefits are and the fact that some people, or groups of them, either do not or try not to receive them.³¹ The interpretation thus runs into difficulties when faced with the demand for generality. Either the goods provided are not generally regarded as benefits or the fact that there exists variability in their receipt entails that there is 'variability in political obligations'.³² This does not easily sit with the need for the general applicability of the principle of fairness as an account of political obligation.³³ However, I shall pursue this thought no further. Even if we defuse this objection by accepting that the state succeeds³⁴ in providing goods such as protection from pollution or the provision of national security, along with other goods deriving from the rule of law, and that such things can be conceived as important benefits and are likely to be received by most citizens,³⁵ the most serious criticism of receipt as the proper interpretation of the principle of fairness lies elsewhere.

³¹For the latter see, for example, Wolff 1990-1, p.166: his reference to anarchists and to gypsies as such cases.

³²*Ibid.* pp.166-167.

³³For this, see also Smith 1973, p. 957: disparity in the individuals' previous sacrifice and compliance, as well as in the effects of previous disobedience, affects the scope of political obligation in terms of fair play.

³⁴Or that it constitutes the best possible way of obtaining the required benefits.

³⁵Recent statistical research by Klosko and Klein purports to show that most people think that they benefit from the rule of law and other services of the state (2001).

The most serious criticism relates to a challenging of the *moral validity* of receipt. This objection is suggested by Nozick's criticism of fairness and it demonstrates that it is morally unacceptable to infer obligations from the receipt of goods which are inescapable³⁶ and thus are forced upon individuals without their consent. The most well known of Nozick's examples reflects this criticism by describing the receipt of possibly desirable yet unsolicited goods. It is the 'public address system' example, where a person is required out of fairness to do his part after having benefited from a public broadcast instituted by his neighbours for reasons of public entertainment. According to Nozick, that requirement is morally invalid, since the benefit in question is received independently of the individual's preference and without its having been consensually accepted. This claim is connected essentially with Nozick's view that only requirements created by acts involving consent are morally acceptable.³⁷ But it can be derived also from Hume's argument against tacit consent discussed in Chapter Two, that we cannot assume obligations in terms of consent when the impositions of political institutions are unavoidable.

The objection has, however, taken a more general form. The principle of fairness makes use of the point that the argument from tacit consent failed to make, facing problems with illegitimate inference.³⁸ This principle indicates our position with regard to important benefits as determinative of our obligation without basing obligation on the assumption that such a position is a sign of consent. Nevertheless, the present objection in its more general form challenges the applicability of the position required in order to bind us by reference to benefits. The more general form of the objection is represented by the so-called 'limiting argument'.³⁹ According to this argument, the principle of fairness cannot apply within schemes that provide benefits with the status of public goods (as described earlier in this chapter), since this status - especially their nonexcludability - makes their *voluntary acceptance* impossible. The impossibility of voluntary acceptance of open benefits renders

³⁶Or avoided only in ways which create great inconvenience or great costs to individuals. For this point see Klosko 1987, note 6 and Arneson 1982, note 6.

³⁷1974, p. 95. For this see also Simmons 1979, p.118 and Klosko 1987, p.246.

³⁸For this see chapter two, section 2.1.2.

³⁹Klosko 1987, p. 244.

the objection more general since it is independent of an advocacy of consent as the only proper moral ground. The principle need not be taken to invoke consent, yet it is not that we did not consent that matters but rather that the inevitable presence of benefits makes any expression of willing acceptance indiscernible. This objection appears in the writings of Rawls. His formulation of the principle makes explicit reference to voluntary acceptance and his later rejection of it as a ground of political obligation is mainly motivated by the difficulties created by this inapplicability (I discuss these difficulties in section 4.3.1.iii). The valid applicability of the principle is questioned when the possibility of voluntary acts is threatened.

The main point of the above criticism is that a focus on the receipt of benefits ignores the self-assumed acts which give rise to individual responsibility while at the same time it assumes such a responsibility. Individuals are considered bound in the absence of their effective participation. But responsibility and obligation may not be derived without the presence and effective expression of free agency and involvement.

The upshot, then, of the two objections above is that mere receipt of benefits does not give rise to a conception of the principle of fairness upon which it is possible to base its acceptability as a ground of political obligation. Firstly, receipt may not be sufficiently general in existing societies, but secondly, and more importantly, even if it is, it has morally unacceptable implications.

4.3.1.ii.Klosko's defence of 'receipt'.

The above conclusion, however, has been rebutted by a more sophisticated use of the notion of receipt, found in Klosko's defence of the principle of fairness. Klosko protests that the strength of Nozick's argument lies in the latter's reference to benefits of negligible value⁴⁰ and aims at providing moral considerations which give to the receipt of benefits moral significance such that overrides the requirement of voluntary acceptance. In discussing this feature of Nozick's example (namely, triviality), I indicated

⁴⁰For this see *ibid.* p.246.

that the value of goods has some importance for considerations of fairness.⁴¹ So I accept that Klosko's observation provides a plausible motivation for his defence of fairness. That defence depends essentially on three conditions he imposes upon the acceptability of the principle. He claims that the 'goods supplied must be (i) worth the recipients' effort in providing them; (ii) presumptively beneficial; and (iii) have benefits and burdens that are fairly distributed'.⁴² The originality of Klosko's contribution is found in his notion of 'presumptively beneficial public goods', which he takes to be those which are reasonably regarded as '*necessary for an acceptable life for all members of the community*'.⁴³ Examples of such that he gives are, 'physical security, protection from a hostile environment, and the satisfaction of basic bodily needs'.⁴⁴ His contention is that in the *indispensability* of such goods we find an importantly relevant and morally overriding feature, sufficient to give rise to obligations through fairness in defiance of the individuals' right to decide for themselves whether to accept them. He completes his defence by providing examples that support his main claim that the members of schemes which provide these goods and also satisfy the other two conditions he imposes are subject to political obligations on the basis of fairness. Finally, by showing how individuals continue to have obligations through fairness in a scheme which meets the three conditions even when it provides 'discretionary goods' - that is, goods that 'are of less value' or, 'not essential to peoples well-being' - he contends that, according to his view, the principle of fairness can effectively satisfy the generality condition of political obligation.⁴⁵

Klosko's theory provides an improved account of fairness in terms of receipt, which comes as a reply, not only to the limiting argument, but also to Simmons' insistence on voluntary acceptance as an indispensable feature of

⁴¹This importance also creates a natural combination between this principle as ground of political obligation and considerations about institutional morality, which, as argued in previous chapters, when applied compatibly with the nature of the relationship needed for political obligation have an important role to play within the debate.

⁴²1992, p.39.

⁴³1987, p.246 (emphasis added). Klosko derives this explanation from Rawls' notion and conception of 'primary goods' (Rawls 1971, p.62 and 92. Klosko sees his 'presumptive public goods' as 'the public analogues of Rawls's primary goods': 1987, p.246. But this claim should not obscure the understanding that Rawls' primary goods *are* public goods).

⁴⁴1987, p.247.

⁴⁵Klosko's whole discussion is in *ibid.* pp.247-259.

the principle's application. However, by use of Simmons' approach, I argue below that Klosko's view and its more effective employment by Arneson (1982) and by Wolff (1995a) underestimate the role of acceptance. It is this role that is neglected and which I want to elevate. And, nevertheless, I further argue that views which focus on acceptance fail to avoid violation of the generality condition of political obligation.

4.3.1.iii.Simmons on 'acceptance'.

In his discussion of these issues,⁴⁶ Simmons concentrates on the notion of 'voluntary acceptance' found in Rawls' formulation of the principle of fairness and provides an explanation of 'active participation' which makes this notion both meaningful and significant for the principle's applicability. He does this because he believes that the notion is compatible with Hart's formulation as well⁴⁷ and that the principle survives the limiting argument both in its Nozickian and in its Rawlsian conception.⁴⁸

The reading of the principle of fairness which concerns us here is the following: individuals who have *willingly accepted the benefits* provided by the state as sustained by the obedience of other individuals are bound in fairness to those others to reciprocate by recognising obligations proportional to their willing enjoyment of the benefits. Because there is a problem that we cannot have obligation in the absence of individual consent, the focus turns on fairness as a principle which shows the individuals' input. Through acceptance, the principle makes a proper supplementation on tacit consent. By applying on the basis of explicit and operative manifestations of individual involvement, it is offered as a good way of evading illegitimate inferences of such an involvement, like those made in the name of tacit consent. At the same time, it does not involve the strict requirements which make explicit consent unattainable.

⁴⁶Simmons 1979, ch. V; 2001, chs. 1 and 2.

⁴⁷Ibid. p.108.

⁴⁸That is, both against Nozick's view that the principle is unacceptable to the extent that it departs from consent, and against Rawls' view that in societies where the benefits provided are open in nature the voluntary acceptance of them is impossible and thus the principle is inapplicable there as an account of political obligation (Simmons 1993, pp. 251-252).

Simmons understands acceptance as ‘active participation’.⁴⁹ In this he is motivated by an observation about Nozick’s criticism of the principle of fairness which differs importantly from that of Klosko (presented in section 4.3.1.ii. above). He observes that, while the worth of the benefits must not be arbitrary, as it is in Nozick’s examples, the real problem with these examples, as far as fairness is concerned, is that the non-contributors are ‘outsiders’ with respect to the cooperative scheme and so cannot be properly regarded as free-riders.⁵⁰ Thus, he concentrates on providing a notion of participation which distinguishes ‘insiders’ from ‘outsiders’, and which is meant to help establish obligations through fairness for the former (in terms of acceptance even in schemes where the benefits provided are open) but which does not obligate the latter at all.⁵¹

Simmons explains acceptance of a benefit as ‘either (1) trying to get (and succeeding in getting) the benefit, or (2) taking the benefit willingly and knowingly’.⁵² The crux of his argument lies in that, in schemes where the benefits are open, acceptance is still possible in *one* of these senses and so can determine who the schemes’ proper participants are. He argues⁵³ that in such schemes it is not clear how individuals would go about trying to get the benefits, since open benefits are received by everyone irrespectively of their attitudes. Thus he sees the limiting argument to be effective with regard to the first sense of acceptance. But not with regard to the second. He claims that normally it is in the second sense of acceptance that we can see open benefits to be accepted. This sense he analyses by reference to facts about our attitudes and beliefs such as ‘[not] regard[ing] the benefits as having been forced upon us against our will, or think[ing] that [they] are not worth the

⁴⁹This idea of his is analysed in Simmons 1979, chapter V; 1987; 1993, pp.248-260; 2001, chs. 1 and 2.

⁵⁰This discussion is in Simmons 1979, p.119 and pp.122-123; 2001, ch.1.

⁵¹This distinction is active also in the problem of securing social coordination understood in its ordinary sense (for the ordinary sense of coordination, see note 5). It is important both in those situations and in the problem discussed at present that the individuals regarded as participants and whose actions affect directly common enterprises be clearly detected. The distinction between insiders and outsiders also facilitates the attempt to find and secure proper relations between individuals within a society, which concerns the anarchist most. By understanding whether and how individuals are involved in the generation and operation of social services, we start to explain their interrelations, thus their obligations, in ways which prevent arbitrary subordination.

⁵²Simmons 1979, pp.132-133.

⁵³Ibid. p.132.

price we must pay for them', and as 'an understanding of the status of those benefits relative to the party providing them'.⁵⁴

However, generality is still a problem. Although such a notion of acceptance is meaningful and has the status of active participation, it is not the usual attitude of individuals in existing states. It is rare that we consider our political obligations as the correlative burdens of benefits received 'willingly and knowingly'.⁵⁵ For example, many citizens hardly notice benefits that they receive and many others do not believe that the benefits received are worth the price imposed on them, as is the case with high taxes, legal restrictions on harmless private pleasures or compulsory participation in wars of foreign policy.⁵⁶ This point receives support from the considerations concerning the idea of political communities as schemes of social co-operation, to which I will turn in section 4.3.2.

4.3.1.iv. The significance of 'acceptance'.

Despite the failure of the principle of fairness to meet the generality condition of political obligation when understood in terms of acceptance, I

⁵⁴Ibid.

⁵⁵Ibid. This argument is the first step for my disagreement with Klosko as regards the importance he places on the fact that ordinary people think that they have political obligations and tend to conceive these obligations in terms of fairness (2001). Although I concede that the moral beliefs of ordinary people matter, I do not think that the results of Klosko's empirical investigation make any important progress towards establishing political obligation on the basis of fairness. First of all, that the facts are such is itself doubtful: the form of the questions asked in Klosko's investigation and the answers to them do not identify clearly the aspects characteristic of what could be seen as a genuine belief in political obligation and there are many instances where people's beliefs support the anarchist conclusions (for these kinds of arguments see: Green 1996; Simmons 1996, p.33). But even if people have the beliefs about political obligation that Klosko's investigation presents them to have, this does not show that they enter the relationship of obligation which they approve of in the actual circumstances applying to them, nor that they demonstrate the attitude of acceptance presented here (and the following examples in the text are characteristic cases where they don't. These overlap with the examples of ordinary belief given by Simmons in 1996, p.33. See also Simmons 2001, pp.33-35). And even if people do not appear to have any intuitive preference for voluntarist interpretations of the principle, this does not show that such interpretations are not the ones proper and faithful to its rationale (and I think that Klosko neglects the sense of acceptance explained here in his arguments against the notion in 2001, sections V and VI). It is this latter point that I attempt to demonstrate in this chapter. These considerations about the role of Klosko's investigation are importantly connected to the idea of schemes of social cooperation involved in the principle and I develop them further in the context of the discussion of this idea below.

⁵⁶Simmons 1979, p.139. Even though Simmons takes the second sense of acceptance to be applicable within existing societies and thus to allow that at least some individuals could demonstrate it there, still he believes that acceptance cannot meet the generality condition of political obligation within existing societies.

want to argue, here, that there is a certain significance in Simmons' conception of acceptance. For this I refer to departures from it which form attempts to confirm the interpretation of the principle of fairness in terms of receipt as a basis of political obligation.

Simmons' argument indicates that voluntary acceptance is very important to an evaluation of fairness. This is made explicit by the fact that his conception of the principle involves reference to 'subjective' or 'psychological facts',⁵⁷ that is, to individuals' attitudes to, and beliefs about, the benefits as signs of their conscious and voluntary acceptance of them. This appeal to subjective elements is central in Simmons. It is significant, despite the following objections.

By pointing out that the *magnitude* (or, indispensability) of benefits is a feature of them which obviates the relevance of psychological facts, Klosko, in his defence of fairness, preserves the notion of receipt at the expense of voluntary acceptance.⁵⁸ Other theorists find problems with Klosko's notion of presumptive benefits and utilise other elements of his account in order to achieve generality in terms of receipt. Wolff, for example, points out that the crux of Klosko's account lies in his two other conditions, namely these of worth and fairness, which in combination with some reference to individuals' 'subjective scale of valuation' may establish obligations through fairness in terms of sufficiently general receipt.⁵⁹ Also, Arneson provides a more qualified version of the principle along Klosko's lines, which invites obligations in terms of receipt where voluntary acceptance is impossible, and believes that Simmons' reference to subjective requirements licenses 'bizarre beliefs' as sources of political obligations.⁶⁰

However, the departure of these theorists from subjective elements is problematic. Klosko's reference to indispensable benefits is based on other moral principles than on fairness (e.g. on the idea of need and the duty to help persons in such a situation or the duty to contribute to projects essential

⁵⁷Simmons 1993, pp.254-257.

⁵⁸Klosko 1987, pp.248-249. See the discussion of his argument in section 4.3.1.ii. above.

⁵⁹Wolff 1995a, pp.94-96.

⁶⁰Arneson 1982, pp. 623 and 632. See also Simmons 1993, note 79.

for community life).⁶¹ And, more importantly, decisions about what is to count, not only as discretionary, but also as indispensable benefits need to be made on the basis of the subjective attitudes of individuals which make active participation possible. If, for example, it is claimed that environmental protection services of the state oblige individuals to reciprocate, we need to see whether those individuals see such services worthy of the political burdens, whether they do or they do not consider and follow other ways of providing environmental protection as the optimal ones and whether they continue to enjoy provision of governmental such services, in order to discern the indispensable receipt which invites reciprocation. As Simmons states, 'the indispensability of benefits, then, seems an indication of when the requirement of active participation is most likely to be satisfied'.⁶² This argument applies to Arneson and, in my view, to Wolff as well. Arneson appeals, among other things, to the condition that 'the benefit [be] uncontroversially a benefit for all'.⁶³ But, as Simmons argues, such a requirement avoids being too stringent only if it makes reference to subjective elements.⁶⁴ In the same way, Wolff's condition of a subjective scale of valuation⁶⁵ acquires meaning, so as to be used as a test of the generality of the principle's application, only when individuals' beliefs are taken into account as significant criteria for knowing what is, in fact, valuable to each of them. Wolff explains that receipt must be 'worthwhile' for each individual and that this is not the same as trying to see 'whether the individual *thinks* it worthwhile', because individuals' own calculations might not be very good.⁶⁶

⁶¹For this argument see for example Simmons 2001, pp.35-36.

⁶²Simmons 1987, p.273.

⁶³1982, p.633.

⁶⁴1993, note 80. Also, Simmons' qualification of 'non-negligence in one's beliefs' defeats Arneson's objection from reliance on bizarre beliefs. Such a lack of negligence is similar to the conditions of knowledge and rationality which make consent valid (see my chapter two, subsection 2.1.1.), although attitudes evaluated on the basis of the principle of fairness need not involve the knowledge that one acquires obligations by one's performance (as involved in the deliberate undertakings which form consent). And still, while 'culpable or negligent ignorance of the source, nature, or value of the benefits one enjoys will not (by itself) excuse one from obligation under the principle of fair play', it is the responsibility of the participants in a cooperative scheme to inform consumers about the 'expectations of reciprocation, *not* the responsibility of consumers to pay for what they unavoidably and innocently consume' (Simmons 2001, pp.32-33).

⁶⁵Or, otherwise, of a function of the state which is 'worthwhile' for the individuals: Wolff 1995a, p.96.

⁶⁶Ibid.

Yet, for political obligation it is the attitudes related to these calculations that matter. Wolff himself admits that it is difficult to know how the condition of worth is met for a given individual.⁶⁷ And it is here that the importance of acceptance becomes obvious, as a clear expression of subjective facts. As in the case of hypothetical contract arguments we need to know if ideal rational choice corresponds to actual choice, so do we in the present case need to take into account what individuals actually take as worthwhile in order to build a criterion of worthy receipt that represents their situation fairly and can work for political obligation. So, if the principle of fairness says that individuals who receive indispensable benefits - or, goods that are uncontroversially a benefit to every participant, or goods which are fairly distributed and worthy to individuals according to some subjective scale of valuation - are obliged to reciprocate, then some explicit element of participation needs to be detected in order to give sense and applicability to valuable receipt. In the end, what does it matter if something has worth if people do not want it? Every time theorists try to specify the convention which the principle involves and which individuals should not violate, they need to articulate some attitude of acceptance which makes it meaningful.

These considerations indicate that acceptance understood by reference to subjective facts cannot be easily dispensed with.⁶⁸ Any reference to receipt cannot establish general obligations through fairness without appeal to psychological facts related to the provision, status and worth of open benefits. Also, this kind of acceptance forms an attitude and activity which provides a realistic example of individuals' social behaviour and satisfies a basic and common sense of what could be taken as a sign of active citizenship.⁶⁹ Thus

⁶⁷Ibid.

⁶⁸In his 1999 article, Simmons seems to consider actual receipt as a proper basis of political obligation (e.g., p.764). But, in the end, the point of the argument from active participation is not to decide which one, acceptance or receipt, is superior but rather to preserve in either notion the features which would establish an actual, specific and morally significant behavior, which if sufficiently general in their application within political societies would ground the relationship of political obligation. The actual and solicited receipt of benefits to most of the citizens of a society would be an appropriate ground of this kind and this does not clearly differ from acceptance in Simmons' sense. For the main argument here, the distinction between the two is not crucial.

⁶⁹It certainly is a clear paradigm of 'morally [relevant and] significant features of the specific histories of interaction between individuals and their polities', which compose transactional bases of political obligation (Simmons 1999, p.764). As defended in previous chapters of this

facts of acceptance constitute an appropriate and natural representation of subjective facts. But, the psychological facts which give applicability and moral significance to the principle (i.e. those constituting Simmons' sense of acceptance, or something similar to it) are rarely demonstrated in the behaviour of individuals in the existing states. Thus, the principle of fairness is insufficient as the ground of general political obligation.

Very importantly, such a role of subjective facts brings to the fore the point about the quality, or merits, of institutions elaborated in this thesis. The present argument is that the most decisive appeals to the principle of fairness as a ground of political obligation need to include reference to subjective features. This re-enforces the following claim: the merits of political institutions - in terms either of positive qualities of their character (such as justice) or of the services that they provide to their subjects conceived as a whole (such as the general provision of benefits) - are an important aspect of evaluations of them. By reference to these aspects we can assess and justify their existence. But in order for us to decide their relation to the members of their society and, more precisely, their authority as reflected in the generation of political obligation, it is necessary to examine the actual and specific functions of these institutions in the manner they affect each of their citizens through the relevant particular practices, activities and interactions which would create the relationship of political obligation.

In relation to these points, there is an important aspect about the role of the principle of fairness which underlies appeals to receipt and which the anarchist cannot disregard. There is a specificity of political interaction which makes such an interaction complicated. Social problems involve *interdependence*, the fact that individuals within societies act in ways that affect others. When some individuals act without worrying about how their behaviour affects others they are taking a space to act freely which invades the sphere of other individuals, they act at their expense. This might be selfish and unfair. And it is this that the principle of fairness can indicate

thesis, such bases seem to be the only ones capturing the particularised and actual nature of social interaction necessary for establishing political obligation. And likewise to be closer to securing the ideal of active participation, the core of the character of social relations which anarchism aspires to.

and correct. Defenders of fairness who focus on political obligation misapply it. It cannot ground political obligation. Yet there is a place for it as a way of putting limits on the free interaction of individuals. Under this understanding, fairness in terms of receipt might be a good principle for defining legitimate social interrelations. Being forced to recognise what we have received might designate the limits required for seeing how to live in a society where we are interdependent. The principle says why there are moral limits to what we can do. It thus can characterise interdependence within political societies in a way which makes them morally justifiable irrespective of voluntary acceptance. The anarchist can concede that this explains why we might have moral obligations from receipt of benefits and why this in turn can make a social system good. But what he asks is why assume that the state, even a good state, can enforce such obligations on us? The preceding anarchist argument indicates that without some expression of individual acceptance there cannot be any satisfactory specific application of receipt, as required for political obligation. Subjective facts are necessary for recognition of when valid receipt occurs. However, if we see the principle of fairness to be determining the character of social interdependence by generally specifying in terms of receipt that the rules which regulate social procedures are fair, this is a valuable role for it to play even for the anarchist. This is a limited application of the principle. It defines a background within which obligations can arise and operate properly but it does not itself generate general political obligation. And it is this that the critical philosophical anarchist presses upon the defender of political institutions.

It is fundamental for the argument of this thesis that in the notion of acceptance we find a significant way of attending to the kinds of interaction which express self-governance in a society. In Chapter Two we saw that actual consent, if it existed, would constitute a direct and primary indication of individual self-determination and active involvement in social life. A similar indication is found, in the present chapter, in the kind of active participation involved in the fairness principle. The discussion of fairness reveals, through the notion of acceptance, forms of explicit, voluntary involvement on the part of individuals which are indispensable features of certain relations and possibilities of valuable social communication. The willing acceptance of

benefits becomes a clear indication of when and how individuals are involved in relations of interdependence with others and the corresponding obligations. This shows that for the generation of political obligation as a central characterisation of our relation to political institutions, such forms of interaction are necessary. And, whenever they existed, they would primarily manifest the expression of individuality and active involvement which makes proper social relations possible. That is, they would create the desired combination between individual authority and social interaction. Yet political institutions, by their very nature, circumscribe such important expressions of self-government. The required forms of participation do not establish an obligation to political institutions because they are not enabled within societies governed by such institutions.

4.3.2.Fairness, political obligation and the idea of societies as 'schemes of social cooperation'.

The conclusions of the above discussion lead me to the second area where the principle of fairness faces problems with the generality condition. This concerns the conception of political communities as *schemes of social cooperation*. This conception is a significant contribution to the principle. It facilitates a different understanding of political societies and relations in terms of their status and worth. The political schemes are understood as 'cooperative enterprises on a very large scale' and our obligations are owed to the other participants in such schemes, who work together with us for a common purpose.⁷⁰ This idea of political relationships reflects a background which is characterised by a complex web of interactions and which gives a more comprehensive picture of the sense of reciprocity involved in the principle of fairness and applied through the kind of active participation discussed in the preceding section. It also departs from the usual picture of political relationships as vertical duties to governmental bodies which monopolise the right to determine the conditions of our social lives. As will be explained in the concluding section below, this departure challenges the established

⁷⁰Simmons 1979, pp.116 and 140.

understanding of the political as the sphere where our lives are organised publicly and on a large scale in terms of institutionalised coercion.⁷¹

At this point, the significance of the notion of social co-operative schemes for the discussion of fairness as a ground of political obligation is simply stated. Genuine co-operation involves an actual, conscious and joint attempt to achieve the common good - as evidenced in small-scale, strongly co-operative ventures - rather than the mere 'rendering of services' or a rule-imposed or an accidental co-ordination of activities.⁷² And it is this picture that gives rise to our intuitions about fairness. Existing governments do not have the status of co-operative enterprises: they work in large societies, where the sense of sharing a unifying purpose in their everyday social activities and duties is lacking in most individuals. They involve a number of features which make them depart from a genuine picture of a strongly co-operative scheme, features such as the coercive enforcement of rules and suppression of the independent role of personal morality in sanctioning non-compliance.⁷³ Present societies incorporate ongoing schemes of social co-operation, those which involve a practice which needs the contribution of a large number of citizens in order to be sustained and those which create a general obligation that would not be concretised without their existence. And political institutions have a significant instrumental value in maintaining such schemes. Yet these activities do not make political society itself a large and unified scheme of social co-operation and the moral reasons for acting in ways that sustain such practices are not based on the fact that political institutions, or the law, facilitate them.⁷⁴ Moreover, if we apply to these societies a 'loose sense of cooperative scheme', namely as 'systems of rules designed to regulate' our activities in ways beneficial to all (or otherwise, as facilitating the provision

⁷¹Namely, in terms of institutions which work as a body separate from the rest of society and determine the public life of individuals in their territory by concentrating and monopolising the authority to define the rights of those individuals and force obligations upon them; and in these functions of them such institutions are backed by coercion, which they also concentrate and monopolise (for these, see Miller 1984, p.5; Wolff, R. P. 1970, pp.3-5).

⁷²Simmons 2001, pp.38-42.

⁷³Ibid. p.41.

⁷⁴So, the existence of schemes of this kind within present political societies does not give rise to a general political obligation. For these points see Raz 1979b pp.247-249. They are also related to the arguments in chapter three about how two main legal techniques, or, more generally, political functions, may make political institutions morally worthwhile - more precisely, just - without however giving rise to a general moral obligation to obey the law.

of services), they cease to provide backgrounds suitable for the application of the principle of fairness.⁷⁵ Thus, present societies lack the reciprocity in social relations involved in genuine schemes of social co-operation and in this way they deprive their citizens of a conception of their governments as co-operative schemes characterised by horizontal relationships. Likewise, their citizens seem to not commonly regard any benefits provided to them as the fruits of 'the cooperative efforts of [others as their] fellow citizens'.⁷⁶ At the same time, as argued during the examination of the first area of anarchist criticism in this chapter, many of the citizens of existing states seem to lack the attitude of acceptance in further ways: they are likely to be those who 'have not taken the benefits (with accompanying burdens) willingly'.⁷⁷ The lack of these elements makes the violation of the generality condition of political obligation explicit. Successful accounts of political obligation that are founded on the principle of fairness would be those in which the aforementioned elements are present. Thus, these final considerations on co-

⁷⁵Simmons 1979, pp.140-141; 2001, pp.38-42

⁷⁶Ibid. p.139. The attitudes and beliefs of ordinary people lack this reciprocity, conception and approach even when these people express in general terms belief in the existence of political obligation which is also generally formulated by use of elements of the principle of fairness. It is on this ground that Klosko's investigation is unsatisfactory (see Klosko 2001. Such an absence is evident, for example, in the fact that the participants in the study did not show a clear sense of the relevance of the levels of compliance among the members of a cooperative scheme in their views about political obligation; in general, the difference between fairness and gratitude was not refined: *ibid.* p.28). More generally, there is a difference between people's expressing belief in political obligation and their actually having it because they actually enter the relationship they think in general terms that they should enter and they actually believe in every particular case in the existence of the elements which create it. Furthermore, and importantly, Klosko's research is conducted within a background of already existing institutions and thus its results (which are anyway based on a limited group of people) might apply to them and general principles might seem to be met only through them because they are the Establishment and as such they already have an effect on the beliefs investigated (in the same way, these beliefs are schooled out of voluntarist interpretations of the principle of fairness and we lack the attitudes of active participation which, if it existed, a scheme of social cooperation would cultivate. See also Simmons 1996, pp.33-34.). We are not asked whether we can satisfy such principles in other ways, whether we can have other social arrangements and attitudes, whether we can have the benefits in other ways (the assessment of the costs and benefits to be balanced is itself understood differently when we take into consideration the alternative of realistic nonpolitical societies: Simmons 2001, pp.37-38). When people are asked about their obligations they are not asked on the basis of a more fundamental question regarding all the possibilities of addressing them, other than and beyond the state. I discuss how the lack of this approach characterises the debate on political obligation as a whole and the significance of this phenomenon as indicated by the anarchist criticism in the following chapters of this thesis.

⁷⁷Simmons 1979, p.139; 2001, chs.1 and 2.

operative schemes show, once more, that the principle of fairness fails to establish a general obligation to obey political institutions.

These considerations simply state that existing political institutions fail to incorporate the kinds of interaction that characterise genuine schemes of social co-operation and thus cannot claim political obligation on the basis of fairness. Partly, they are based on empirical claims, which remain the subject of controversy.⁷⁸ Yet, the main aim of my discussion of the idea of social co-operation is to indicate its value. This idea helps to clarify the character and importance of horizontal relationships. It highlights the way in which forms of interdependence which involve participation, reciprocity and co-operation stand in opposition to hierarchical relationships. In the former, citizens are seen as equal agents who create, determine and support their social world in continual interaction with one another. They are equally the legislators and the subjects of the social terms of their interaction. Every claim arises from an individual and is balanced by those arising from the other participants rather than being dictated from above. The presence, needs and actions of each participant are themselves part of how social aims and changes are conceived and pursued. And any contribution or achievement on the part of an individual is directed to the other members. Expressions of freedom, obligations and projects take place by reference to the rest of those who compose the social scheme. Each individual acts directly on the basis of proper limits in relation to others. They don't do something which would undermine others and which would reflect circumstances where others can undermine them. Such a background becomes an explicit reminder of the fact that societies are made up by individuals and characterised by their interrelations. In hierarchical structures, on the other hand, this sense of interdependence is absent. Rights and duties are regulated from above. One group of individuals becomes the exclusive and authoritative designator and co-ordinator of social aims and interactions, the legislator and the ruler. Individuals understand their relations in terms of hierarchy and their obligations are directed to those who rule rather than to each and everyone of the fellow-citizens with whom they inhabit society. The

⁷⁸In notes 55 and 76 above I attempted to give a stronger defence of these claims. Yet, this defence invites further discussion in order to convince opposing views.

social background becomes one within which relations of inequality are established and encouraged, dismissing the fact that they apply among free and equal human beings. Social relations become a network of subordination and unequal dependence. It is this framework that the idea of schemes of social co-operation challenges and is meant to replace. As such, it is a valuable idea for existing social organisations to aspire to.

The preceding argument relates to the fact that political institutions have a distinctive character, indicated in Chapter Two. As explained on the basis of Hume's view in that chapter, the exclusive and inevitable character of political institutions does not invite the kinds of attitudes and interactions involved in consent. Nor, as we see in the present chapter, does it so with regard to fairness. Their assessment should be informed by this special character. Any justification of political institutions should be developed in view of the importance of these elements for political obligation and of the fact that the nature of political institutions excludes them. The authority of political institutions cannot be justified in terms either of consent or of the forms of acceptance and co-operation involved in fairness, and those institutions must be evaluated in light of this defect and through a kind of justification which is compatible with their nature. Thus, if their existence is to be justified we need to search for the expression in them of values which make their exclusive and coercive character moral. Since they cannot be social schemes of a cooperative character, political institutions need to be shown to involve in some other way the kinds of values which would make them necessary and acceptable.

4.4.The implications of the anarchist criticism of the principle of fairness.

The results of the preceding discussion can be summed up in the following points:

(1) While justice is not integral to considerations of fairness, the importance of its demands poses a serious constraint on the application of the principle of fairness as an account of political obligation.

(2) The notion of acceptance, conceived properly by appeal to subjective

facts, is necessary to an understanding of the principle of fairness and re-introduces the value of voluntariness. It also represents an attitude which clearly satisfies the particularity condition of political obligation. Nevertheless, it involves many theoretical and practical problems, which have to do with the disparity among individuals' attitudes to benefits and the resulting controversial status of their participation within society. Most importantly, it does not save the principle from the difficulties it faces with regard to the generality condition of political obligation.

(3) Existing societies are not schemes of social co-operation and, in this, they fail to provide the feeling of reciprocity which the rationale of the principle of fairness requires. Thus, they both lack the desirable features of the idea of political communities as large co-operative schemes and fail to combine satisfactorily accounts of political obligation based on the principle of fairness with the generality condition.

Bearing in mind our concern with the contribution of critical philosophical anarchism to the debate on political obligation, it is necessary to draw out the implications of these results.

Firstly, the justice of an institution continues to be morally relevant for the evaluation of theories of political obligation. This relevance is coherent with the ideal of legitimacy described in the previous chapter on the basis of the anarchist criticisms of the natural duty of justice. And it preserves in the discussion of fairness the position about the role of institutional morality derived from the previous chapters of this thesis: that is, that considerations regarding quality continue to affect significantly evaluations of political constraints, but they need to take the form of more specific features of social interaction in order to provide grounds suitable to the actuality of political obligation.

Secondly, through the notion of acceptance and its role in the evaluation of the principle of fairness, the desirability of voluntariness recognised from the perspective of the anarchist ideal in Chapter Two is confirmed. Although not in the form of deliberate undertaking, a voluntary form of involvement (active participation) retains all its significance. And this is a strong evidence of the central role that specific interaction plays in the creation of political obligation.

Finally, the idea of communities as co-operative schemes becomes an element of great importance for an ideal of political legitimacy. It provides a picture of social lives which departs from the institutionalised coercion which existing states exemplify (and are mainly criticised for, at least from the perspective of political anarchism) and which can guide their improvement. Also, it constitutes the conception of social relations preferred by the anarchist.

The idea of reciprocal relationships among individuals, reflecting a spirit of co-operation and mutuality in the public activities, retains an alternative picture of the 'political': as a sphere within which social life is organised on a wide scale but, at the same time, within which such regulating efforts are not defined in terms of centralised and monopolised coercion. Social interdependence takes the form of horizontal relations of equal responsibility and benefit. Also, this picture is a central feature of anarchist social visions, something which inspires theoretical defences of their possibility as well as empirical efforts towards their realisation. The implications of these matters will be discussed in the conclusion of this thesis. At this point, I restrict myself to two preliminary observations. Firstly, the anarchist proposals for societies composed by free co-operative organisations oppose institutionalised coercion and to this extent they do not face the problems created by the moral elements of the ideal of legitimacy for polities which display institutionalised coercive structure. Secondly, the anarchist rejection of political obligations as the core of a conception of our social relationships suggests that anarchist proposals can be defended to meet the required moral demands without having to meet the four traditional conditions which only a theory of political obligation has to satisfy (since, as argued in the previous chapters, these conditions reflect the political nature of that obligation in its traditional conception).

Both acceptance and the idea of schemes of social co-operation provide paradigmatic ways of expressing self-governance. Individuals should be capable of thinking and acting for themselves in order to survive and to live meaningful lives. The two elements distinguished by the discussion of fairness make explicit the value of participation and the form of participation appropriate for this capacity. The constant and explicit expression within a

society of a willing involvement on the part of individuals in its aims and services, which acceptance exemplifies, is a direct application of self-government and the kind of active citizenship necessary for it. And a sense of horizontal relationships of a reciprocal character, as involved in schemes of social co-operation, cultivates proper social relations, within which self-government is enhanced. Defenders of political constraints need to attend to these elements and their value for assessing political institutions.

To conclude: in this chapter, the anarchist perspective is made explicit through an insistence, in the language of fairness, on the values of active participation and actual reciprocity as the proper features of the kind of a particularised moral relationship which would generate political obligation. And such an advocacy on the part of the philosophical anarchist of the kind of acceptance which would form active participation is also an expression of the fact that this anarchist perspective goes together with an ideal of legitimacy, a prior vision of what an application of proper social relations would be like. This latter is expressed further in the anarchist insistence on the idea of schemes of social co-operation as the defining structures of social life. The failure of the fairness defence of political obligation justifies these claims. And, in turn, these points suggest the following: first, that political obligation constitutes an actual and particularised relationship such that needs to be detected in the specific practices of political institutions and their interaction with individuals. Secondly, the fact that such a relationship, in this case through the elements of fairness, is very difficult to exist in our societies shows something important about political institutions. They lack an aspect which would justify the claims they make on individuals and this affects their character and acceptability. In view of the absence of political obligation and the kind of active participation it would reflect, it becomes more crucial to ensure that political constraints have a character such that makes them morally justifiable. For this, they need to be justified on the basis of fundamental moral values and in the light of an ideal of legitimacy which they fail to satisfy. The centralised, monopolistic and coercive character of political constraints creates inappropriate social relations. In order to be justified, political constraints need to be shown to respect constantly the values on the

basis of which they are claimed to be defensible in the first place - values such as security and peace, justice and fairness and even freedom itself. This provides an alternative way of enabling active participation within political societies, and the acceptable relations it generates, given the absence of political obligation. One which involves and motivates a more critical and demanding approach to political institutions. The principle of fairness, as one such value, can be used as a way of characterising social interdependence within existing political societies. It is a good principle to look at with regard to some obligations to others and to define the character of social procedures, although it does not establish the exclusive enforcement by the state of such duties that we might have.⁷⁹

⁷⁹An earlier version of this chapter was published in the *Review Journal of Political Philosophy*, Vol.1, University of Sheffield, 2003.

Chapter Five. Where Friends of Political Institutions and Anarchists Are in the Same Boat.

In this chapter I collect together and elaborate on the results of the preceding discussion and demonstrate the value of critical philosophical anarchism within the debate on political authority. The aim of the chapter is to show the contribution that critical philosophical anarchism makes to evaluations of political institutions; and to argue that, whether or not one is an anarchist, there is a distinctive and indispensable insight within this anarchist position and this should affect the framework of the debate on political obligation and be accommodated by other perspectives on the justification of political institutions.

I begin, in the first part of this chapter, with a summary of the *negative points* of the anarchist criticisms of theories of political obligation found in each of the previous chapters. Then, I describe and analyse the *positive points* of these criticisms. Also, I anticipate the programme of work that awaits political thought as a result of the challenge of critical philosophical anarchism. In the second part of the chapter, I provide the main analysis of the *contribution of critical philosophical anarchism*, especially as it is involved in the positive points of this position elaborated in the chapter.

5.1.Negative and positive points resulting from the anarchist criticisms.

5.1.1.The negative conclusions.

The *negative* conclusions as derived from the anarchist criticisms of different theories of political obligation above are as follows:

In chapter two, the anarchist critique showed that the voluntary undertakings of individuals, which constitute the core of consent and contract theories of political obligation, cannot be satisfactorily combined with the generality condition in a way that preserves the political nature of that obligation. The problem of agreement remains unsolved and no version of

voluntarism establishes a form of undertaking that actually binds individuals to the state to a sufficiently general extent. Thus, voluntarist theories fail to meet the basic conditions of a comprehensive account of political obligation. This failure is explained on the basis of their most central commitment.

The conclusion of chapter three maintains that, whilst the Rawlsian natural duty of justice does not in principle violate the particularity condition of political obligation, it does not establish actual political obligation. The just character of an institution does not provide sufficient ground for such an obligation. Whilst the demands of justice form moral criteria for the acceptability of institutional organisations, they are not derived from the essentially political nature of those organisations. But an acceptable moral defence of the authority of the state demands that political obligations derive from precisely that feature of public institutions.

The principle of fairness discussed in chapter four fails to satisfy the generality condition of political obligation. This inadequacy is related both to the notion of active participation necessary to capture the essential rationale of the principle and to the idea of society as a scheme of social co-operation which the principle involves. Both these elements form distinctive proposals of the fairness account and make the principle theoretically attractive. Yet, their detachment from real, political circumstances disqualifies the principle of fairness as a general ground of authority.

These conclusions show that there is no general political obligation and that critical philosophical anarchism provides a perspective from which the limitations of defences of political obligation can be seen clearly. This viewpoint allows for an accurate exposition of the aspects in which each theory would have to be refined in order to account satisfactorily for political obligation and informs the theorist about deeper difficulties that such a demand for refinement designates, which are discussed in the rest of this chapter.

5.1.2. The positive conclusions.

The *positive* upshot of the critical philosophical anarchist critique is reflected in its incorporation of *ideals of legitimacy* and, most importantly, in

the perspective it proposes to approaches to political institutions and to our conception of political relations and lives.

As claimed in the previous chapters, the anarchist ideals of legitimacy correspond to accounts of what a successful attempt to justify political authority would look like and represent paradigms of political legitimacy which existing states must, in order to be legitimate, exemplify. They thus relate to both the features of what Simmons offers as a more comprehensive part of philosophical anarchism.¹ The first feature is found in the different anarchist ideals themselves, which are offered as prior visions of the appropriate social relations that existing societies must realise in order to be legitimate. The collection of the moral ideas which have been derived from the anarchist criticism and shown to be indispensable criteria of morally acceptable authority, or social organisation more generally, is already incorporated into ideal accounts of their actual and specific application within societies. The role of these standards in evaluating political institutions preserves the best possibility for assessing their legitimacy. The second feature is found by the anarchist in the combination of the moral ground proposed by each theory with the four formal 'conditions of political obligation' adopted in this thesis - namely generality, particularity, bindingness and content-independence, which together express the nature of the political as presented in the four 'theses on the political'.² The debate on political obligation concludes that attempts at this combination are unsuccessful.

The arguments examined in this thesis provide three moral forms of the anarchist ideal of legitimacy. The first is '*the ideal of voluntariness*'. It involves a recognition of the substantial role of voluntariness. That is, the ideal focuses on the conditions of free deliberation and choice as vital features of participation in the public sphere, which would found a morally significant relation between political institutions and each of their subjects if they actually applied; it expresses in this sphere the political analogue of self-assumed obligation and free agreement (chapter two). The second is '*the ideal of justice*'. It concentrates on the centrality of justice as a necessary feature of

¹See Simmons 1996, p.36, note 9. For a presentation of these features, see my introduction section 2.

²See introduction, section 1.

public institutions, which, in order to ground political obligation must be represented in the specific practices of such institutions and characterise their particular interaction with their citizens; it must also be compatible with an extent of efficiency in order for these practices to be feasible and meaningful (chapter three). A third anarchist proposal of an ideal of legitimacy is found in '*the ideal of social co-operation*'. This ideal depicts, as the most suitable implementation of actual and morally significant social relationships, a political community which exemplifies purely and effectively the characteristics and the spirit of a scheme of social co-operation. Such a scheme gives rise to a more fruitful conception of the 'political', found especially in the horizontal relationships and the ethos of reciprocity, co-operation and mutual aid among individuals which are its central features. Fundamentally, it reflects the value of voluntary participation (chapter four). Meanwhile, in terms of the traditional defences of the state, all these versions of the ideal preserve the demand that any defence of that kind should make clear that the four traditional conditions of political obligation are satisfied.

The function of the anarchist ideals of legitimacy just described corresponds to two main aspects of the anarchist perspective itself, as reflected in the results of the anarchist critique presented above. This perspective imposes the satisfaction of the conditions of political obligation as a precondition of any theoretical defence of the legitimacy of political authority. This test concerns all and only the attempts to justify political authority and the existence of political obligation. Furthermore, the anarchist perspective finds in the moral requirements which it demands be met by both defences of the state and anarchist visions of stateless societies, moral principles which must be embodied in the actual, specific interactions that characterise these social structures mostly in order for them to be legitimate.

Voluntariness remains a desirable feature of a valid justification of authority. Most importantly, it is a valuable expression of the capacity for self-governance. That is, the ability, responsibility and right of individuals to determine their own lives and act accordingly. The anarchist conclusions in chapter two indicate that the problem with theories which appeal to voluntariness is the element which these theories try to justify and their use of voluntariness for such a justification: the desirability of voluntariness verified

by the anarchist highlights the problematic nature of the notion and existence of political obligation. This, in turn, suggests that voluntariness be seen as part of an understanding of our public lives which calls into question appeals to principled defence of authority, rather than as part of such a defence.

The recognition of the value of justice in chapter three provides another part of a proper idea of what a satisfactory organisation of public life might involve. It thus accepts the appropriateness of the theoretical appeal to this ideal, and yet highlights the shortcomings of accounts which make the justification of political authority the focus of social organisation. Once more, the appeal to a desirable moral value issues in the failure of defences of political obligation and, in this, suggests a revision of our understanding of political relationships and lives. Significantly, the discussion of the principle of justice indicates more clearly difficulties which arise from the very nature of political constraints.

Finally, the idea of societies as schemes of social co-operation in chapter four, supplements the proposed revision of our view of the political with a comprehensive example of what political life understood in opposition to a principled appeal to authority would be like. Again, since existing institutions do not exemplify such schemes, a defence of their authority in terms of the principle of fairness becomes problematic. The idea of reconstructing social life along these new lines, however, remains appealing, since it can perhaps be implemented *without* appeal to authority and the centralised functions of the state.

The question remains, however, whether anarchist social visions have better prospects as forms of public organisation. This question is motivated by the thought that such visions are not offered as representations of legitimate political authorities but rather of alternative forms of social life. Their legitimacy, then, might be established only on the basis of the suggested moral ideas and without satisfying the four traditional conditions which only an account of *de jure political* authority needs to satisfy. It is interesting to examine whether anarchist social structures substantiate schemes of social co-operation of the kind which anarchist ideals of legitimacy exemplify. To examine, that is, whether anarchists can meet their own standards in defence of an alternative view of social life.

The value of the anarchist perspective and ideal of legitimacy is affirmed in that the moral ideas which they highlight as criteria of acceptable forms of social organisation are derived from the anarchist criticism itself and constitute positive features of it. They are the result of the arguments preceding the conclusions of each chapter, which were presented so as to be open to critical evaluation. The acceptability of these conclusions and the moral conditions they sustained as criteria then explains the acceptability of the anarchist perspective and ideal of legitimacy. The fact that the anarchist criticism is based on general intuitions about freedom, equality, justice and the value of co-operation, and that the anarchist challenge reflects an insistence on the importance of these values, shows that this challenge aspires to moral reasons which everybody can accept. In articulating acceptable moral beliefs, the substantial moral standards preserved by the anarchist perspective open the way for expressing suitably and perhaps meeting the motivations³ which gave rise to the problem of political obligation.

This latter point depends on another central feature of the anarchist perspective. That is the position that within the debate on political obligation such moral values cannot become bases of this obligation when they are offered in an abstract, theoretical form, nor when they are translated into general moral qualities and accomplishments of political institutions. Their respect within an account of appropriate social relationships can be shown only in a direct and particular application of them in our political reality. To the extent that this demand is not satisfied, defences of political obligation fail. But such a position about the role of moral values within the debate on political obligation retains a further function for them. It suggests that, nevertheless, in their more general applications, these values continue to provide indispensable criteria for the acceptability of political notions, doctrines and institutions. This observation re-defines the tasks of political theorists. It provides the basis for a more informed, far-reaching and comprehensive evaluation of constraints, one which transcends the boundaries of the debate on

³As explained in chapter two, section 2.2., these motivations constitute a worry on our part about suffering an unquestioned, unqualified and unlimited imposition of political requirements and their consequences upon us, which then gives rise to doubts about the very idea of being obliged in the first place and to a demand for an explanation and justification of such requirements.

political obligation although is still motivated by it. For all these reasons, the anarchist insistence on a moral grounding of authority and on the seriousness of the failure of theoretical defences of state-authority becomes theoretically relevant and, perhaps, indispensable. These points provide the core of the evaluation of the contribution of critical philosophical anarchism advanced in this thesis and will be developed in the second part of this chapter.

The anarchist perspective and its adherence to certain ideals of legitimacy, as well as the new light under which they promote the relevant moral values, show that the accounts of the state examined earlier in this thesis fail to prove that existing states respect the relevant moral ideas in the way the problem of political obligation demands. The anarchist criticism of the state rests primarily upon the following claim: since all human beings are free and equal such that no one has, in principle, the right to decide for and command the others, only a form of ruling which satisfies the four conditions of political obligation, or, which actualises within particular interactions principles which express the recognition of the above moral ideas as generally acceptable moral reasons, would be legitimate.⁴ Defences of the political institutions fail to meet these requirements. This presents a strong reason for questioning the possibility of their legitimacy.

The above claim expresses two central and related anarchist concerns, which give rise to the anarchist challenge. Firstly, the anarchist focuses on freedom as an ideal and a characteristic of the status of human beings which cannot be compromised easily. In view of this ideal, political constraints remain a problem, even when they are necessary. If they are claimed to be necessary and legitimate, political institutions must prove to be so in terms of that very idea. They must provide a form of freedom which, even if different from the freedom belonging to human beings outside political structures, is equally substantive and valuable,⁵ and they should apply it constantly in their

⁴This is also a reaction to pluralist, or supplementary, accounts of political obligation, such as those suggested by Wolff 1995b and Gans 1992.

⁵A form of freedom which still involves the capacity for self-preservation and a direct assertion of morality as responsibility and successful decision, which freedom in its most basic form is (for this, see the final section of chapter two, especially note 93 based on Rousseau 1762, book 1, ch.6). In the end, the state must be proved to be a *self-imposed constraint* on the part of individuals - or, that within it they *remain* free - in order for it to

practices and in their interactions with each and every of their subjects. Alternatively, they must respect and concretise other values which are important enough to counterbalance losses of freedom, or, the implementation of which can itself be seen as promotion of freedom, or compatible with it. Justice, equality and community are such values and they are stressed by the anarchist perspective and its ideals of legitimacy. But then the state must show steadily that it actually applies and preserves such values, in order to justify the constraints that it imposes. The problem of political obligation concerns one area where political institutions are shown not to do so. The anarchist stresses this failure and its importance. Still, such a demand on political institutions concerns wider justifications of constraints. The anarchist position within the debate on political obligation motivates a focus on more careful attempts in that direction.

Secondly, the anarchist concern with freedom is related to the fundamental anarchist concern with achieving appropriate social relations,⁶ and highlights its importance. The anarchist does not worry merely about the problem of subjecting individuals to the interests or the will of other individuals, but sees the 'problem of subjugation', namely of subjection of one person to another, as primarily one 'of the relations between one person and another', which, to be proper, should involve equal power, 'mutual respect, reciprocity' and fair co-operation.⁷ In social reality this would be expressed properly only in the attainment of active, substantial participation, such that all members of a society see social affairs as their own and are in control of them.

The aspects of the anarchist perspective just analysed incorporate and reflect a commitment to two fundamental anarchist arguments against political authority. The first concerns *self-government*. The anarchist critique developed in chapters two and four indicated that the voluntarism involved in consent and other attitudes of willing participation is a substantial expression of self-government. Self-government creates the proper conditions for individual self-

be justified to them (for this fundamental demand, see the discussion in chapter one, sections 1.1., 1.2. and 1.4.; and the discussion in section 5.2. of the present chapter).

⁶This concern can be expressed otherwise as a claim that anarchism is '...about the quality of relations between people' (Taylor 1982, p.3).

⁷See Raz 1990, pp.16-17 and the discussion of his theory in chapter one, section 1.3.

realisation and for proper relations between persons as free and equal agents. The enhancement of this capacity within social life is achieved by the cultivation and establishment of active participation and this is why social structures must enable such forms of interaction. The voluntary commitment to and participation in social life becomes an actual and effective way for individuals to express their freedom, to determine their own lives and social world and to act on these determinations. Ideal, participatory ways of social interaction form a reminder of the kinds of demands individuals have the responsibility to themselves and to one another to impose on their social world.

This argument relates to the second central argument involved in the anarchist position. This is the argument about the *undesirability of political constraints*. The philosophical anarchist criticism of political obligation indicates one aspect in which political institutions are defective: they do not function on the basis of a morally justified relationship with individuals. And this defect is rooted in the very nature of political constraints and draws attention to it. Although self-government might involve and indeed need constraints, it involves constraints which one puts on oneself - through the careful consideration, choice and implementation of commitments that the individual himself decides that can help build his personality and should determine his life - not external constraints. But political constraints have an exclusive and authoritative character. They establish a framework within which some are ruled by others. This opposes self-government and constitutes inappropriate personal relations. The failure to ground political obligation on the basis of voluntary participation and ideal schemes of social co-operation which enhance individual responsibility and equal interaction highlights this defect. And, in turn, this defect initiates a different approach to political institutions. The fundamental moral values affirmed within the debate on political obligation have a central role to play here. They function as the criteria on the basis of which we can see a new way of evaluating political institutions. The general idea here is that political constraints need to be evaluated in view of the special character they have and its defects. This character makes them unable to meet the conditions of the relationship of political obligation. But it is compatible with an evaluation on the basis of the fundamental moral principles

which their defenders claim that political institutions incorporate. This provides an alternative way of ensuring meaningful participation, given the absence of political obligation. And it initiates a more demanding kind of institutional evaluation. Significantly, it reflects the central claim of the anarchist position: *that it is very difficult for any state to be legitimate*. These points were already suggested in the previous chapters and will be fully elaborated in the second part of the present chapter.

The negative and positive aspects of the anarchist critique are expressed more directly in the subversive campaign of philosophical anarchists.⁸ That campaign's work is to demonstrate, through the criticism of the state, that the non-existence of a general political obligation affects in general our thinking and acting in the public sphere. This is the immediate role of the anarchist criticism. Such criticism exposes the difficulties involved in attempts to defend political obligation and 'removes any presumption in favour of obedience'.⁹ Thus its results 'force us to view the position of man in political society in a different way'.¹⁰ And the anarchist perspective and ideals of legitimacy insist on a set of generally acceptable moral standards for us to adopt in order to conceive and apply adequately political ideals in an attempt to construct political institutions. Thus, they function as a principled reflection of the seriousness and the implications of an attempt to justify political authority. The anarchist position already cultivates the critical attitude suggested by its subversive campaign¹¹ and it already constitutes a strong basis for a deeper understanding and improved conception of our political relationships and lives. Yet to understand the ultimate strength of these aspects of the anarchist position, in fact the real extent of the effects of the anarchist enlightening campaign itself, we need to examine and understand the fundamental demands

⁸Miller 1984, p.18. For a fuller presentation of this campaign, see my introduction, section 3 and chapter one, subsection 1.4.2.i. For representative bibliography, see: Wolff 1970, pp.11 and 18-19; Smith 1973, pp.969-973; Simmons 1979 pp.191-201; 1987, pp.275-279; 1993, pp. 263-269.

⁹Simmons 1979, p.200

¹⁰Ibid.

¹¹This is the different attitude towards the activities, demands and position of political institutions which the removal of a presumption in favor of obedience generates. For more on the anarchist campaign, the attitude it cultivates and its radicalism, see chapter one, 1.4.2.i.

underlying them. This is the central rationale of my discussion of the contribution of the anarchist position over the course of this thesis.

We may conclude from the discussion of the negative and the positive points of the anarchist challenge that within the debate on political authority anarchism provides a constant awareness of the limitations of arguments for political authority, which entails the need for their refinement and, possibly, their abandonment altogether as well as a change in our attitude towards political society. In turn, this affects further justifications of constraints and it must have an effect on *real* institutions.

5.1.3. The implications of the anarchist challenge for political thought and practice.

In the next few paragraphs, I discuss the tasks of future approaches to political institutions, as these are suggested by the preceding discussion.

The anarchist perspective and its *ideals of legitimacy* are to function as a shared normative horizon for both the defender of political institutions and the anarchist. The two opponents can continue their dialogue on a better basis. They can challenge one another and criticise their own beliefs in a non question-begging way. They will have to respect the conditions of political obligation which an account of political authority needs to satisfy and, most importantly, the moral requirements as expressed in the relationships suggested by the ideals of legitimacy and which are provided as the ultimate criteria of morally acceptable forms of social order.

For *friends of the state*, the main effect of the argument from the anarchist perspective is that their victory against philosophical anarchism is not assured. It has been argued in their favour that the standpoint from which the state is criticised by the anarchist is unfairly biased.¹² Anarchists fail to shoulder any part of the burden of proof, demanding that friends of the state defend it against the anarchist critique whilst not demonstrating that they can solve more effectively the problems of social order and cooperation which worry those defenders. However, in the light of the results of the debate on

¹²Wolff 1995b; 1996b.

political obligation, anarchists do not seem to occupy a privileged position unjustifiably. They can say, in response, that by failing to take seriously some of the problems which form the core worry for anarchist theorists, defenders of the state have won an unstable victory. If they *did* take these criticisms seriously they would have to do more by way of argument. The anarchist perspective involves an insight that every political theorist needs to share. It is this claim that I will elaborate in the second part of this chapter.

Thus, the anarchist position now at hand provides the philosophical claims which need to be taken more seriously by friends of the state and which determine how their efforts must be directed in the future as regards the problem of political obligation. It indicates how each theory of the state fails significantly to satisfy one or more of the four conditions of political obligation and how this violates the demands of central moral principles for a plausible account of political legitimacy. The arguments for political authority, then, need to be refined on the basis of the negative and the positive conclusions of the anarchist criticisms applied to each. The defenders of the state might win a more stable victory, if they manage to reconstruct these arguments so as to meet the indicated demands. But the greatest value of these instructions lies in their more far-reaching implications for attempts to justify constraints (especially in what they tell about the very status of political authority), which, in turn, may affect other areas where such defences apply.

For *political anarchists*, on the other hand, the work to be done is to address the challenge advanced on the part of the defenders of the state. They should show, that is, that the social vision of political anarchism lives up to an ideal of legitimacy in a way that proves not only its desirability but also its feasibility. This is the route for them to follow in order to show that they can refine their own accounts in accordance with the demands that they themselves raise. But this is not my task in this thesis. However, I will anticipate attempts in this direction in (the second part of) the conclusion to the thesis.

In both directions, the tasks of the theorist reflect an approach that is also the responsibility of every individual to adopt and which affects directly our position and behaviour within social reality. The dialogue between

defenders and anarchists is one that can be entered by the wider population and its results are to affect social life for us all.

The rest of the discussion of this thesis is based on the first of the two directions in which the anarchist contribution can be demonstrated, to wit, on the significance that the position of critical philosophical anarchism might have for the evaluation and improvement of defences of political institutions. The role of the discussion so far was to provide a clearer view of the nature of the anarchist critique in order to derive the elements which characterise it most and which can be used for a more comprehensive evaluation of the anarchist contribution. These elements are the anarchist perspective, especially as represented in the arguments about self-government and the badness of political constraints, and the provision of ideals of legitimacy.

5.2.The contribution of critical philosophical anarchism.

In the rest of this chapter, I provide an argument which elaborates on aspects of the positive side of critical philosophical anarchism as presented above (in section 5.1.2.). This argument shows the steps through which the criticism of political obligation leads to a different and more radical approach to political institutions, and the way in which the anarchist arguments about self-governance and the undesirability of political constraints are combined with and underlie this process. My aim is to give a clearer demonstration of the implications of the anarchist perspective and thus of the positive role of the anarchist position and its contribution to evaluations of political institutions.

5.2.1.The anarchist perspective.

The preceding arguments lead the anarchist to certain claims about the approach characterising the debate on political obligation on the whole. The anarchist criticism reveals that the moral principles which are offered as bases of political obligation are valid requirements. Also that when they express general qualities which characterise political institutions, they provide important reasons for seeing these institutions as acceptable social structures. But that for political obligation to be established, such qualities need to be actually

incorporated in the specific instances of interaction between individuals and their political institutions. This latter demand is shown to not be satisfied so far, and the results of the examination of defences of political obligation express exactly this fact. This conclusion, in turn, affects our attitude towards political institutions.¹³ Furthermore, and correspondingly, the critical anarchist offers ideal accounts of what social structures which incorporated the required relationships would be like, which can be used as standards for existing institutions to aspire to. And the arguments from self-governance and the badness of political constraints play a central role in this discussion. My claim is that these aspects of the anarchist view comprise a unified position, which has been missed by approaches to the role of anarchism in the philosophical debate, and I argue that this position reflects a very valuable perspective. It is this perspective that I attempt to defend in the rest of this chapter.

The aforementioned aspects of the anarchist criticism are most important because they reveal a deeper problem regarding the approach to the issue of political obligation characteristic of its defenders.¹⁴ Take, for example, the

¹³This effect is typically claimed to be what is involved in the subversive campaign of philosophical anarchism. In the present part of chapter five I attempt to provide a deeper explanation of the importance of this campaign, as well as of the importance of the rest of the anarchist claims presented in this paragraph.

¹⁴To remind the reader, the debate on political obligation involves two main features: a) the distinctively '*political*' character of such obligations and the institutions to which they are owed; and b) the requirement for a *moral* basis of these obligations which is necessarily linked with their political character (see introduction section 1). Voluntariness, justice and fairness are such bases. The main elements used to demonstrate and determine this important link between the political and the moral feature are the four conditions imposed by the anarchist and used traditionally in the debate: to wit, 'generality' (Raz 1979, chapter 12), 'particularity' (Simmons 1979, pp.34-35; Green 1988, pp.84 and 227-228), 'bindingness' and 'content-independence' (Green 1988, pp.225-226). *Generality* means that political obligation should apply to most of (or: to a sufficiently general number of) the people who belong to the society which the relevant political institutions govern. *Particularity* requires that justifications of political obligation should provide a basis for the particular relationship between political institutions and each of their own citizens, a basis for obeying particularly one's own government as it itself determines the conditions of membership within its territory. *Bindingness* and *content-independence* mean that political commands are authoritative as such, in the way they themselves require and independently of the content of specific instances of them; that justifying political obligation means justifying the obligation to obey the law *as it requires to be obeyed*. The main difficulty for theories of political obligation is to connect these conditions with the moral ground provided by each such theory. Particularity constitutes the crucial obstacle to this effect especially because it is the element most indicative of the need for political obligations to be actual and specifically related to all affected parties. The particularity condition is also central to the distinctiveness of the anarchist approach. For these points, see introduction and chapters two to four.

approach of consent theorists.¹⁵ As a representative defender of political institutions, the social contract theorist focuses on the idea that justification should proceed from individuals; that political authority should be voluntarily accepted if it is to be binding. With this in mind, he concentrates on a need for political institutions and asks the question: which form of government would merit a duty to obey it? The idea of the contract is used to produce answers to this question. On the basis of actual contract, the theorist aspires to say that because you *have agreed* to a certain form of government, it is therefore legitimate and you should obey it. On the basis of hypothetical contract, the theorist wants to show that because from a position of equality (a 'state of nature' in the absence of government) and after careful deliberation you *would agree* to a certain form of government, it is thereby legitimate and any instances of this form should be obeyed.

The anarchist follows step by step the arguments in terms of different forms of consent and of contract.¹⁶ Actual consent would be a satisfactory justification of political authority because it represents an actual connection of individual will with the conditions of political obligation. But it is hardly proved that this combination has ever been the case. That is, this form of consent has never taken place to a sufficiently general extent, either in a historical or in a personal form: there has very seldom been an original contract, the conditions of valid choice rarely take place in real life and most of us have never had the experience of such a choice with regard to our relation to our governments. Also when instances of tacit consent are offered as implicit though actual signs of consent, they either require detailed disclosure and specific application at the empirical level, which can hardly be generalised so as to acquire normative significance, or are usually products of illegitimate inference. The implications for the commitment of future

¹⁵In the following paragraphs, I will use voluntarism as representative of the defenders with whom the anarchist enters a dialogue. As shown in the previous discussion, the anarchist criticism and its results about political obligation as well as the present anarchist claims apply with regard to the other theories of political obligation which are the object of this criticism. Thus these claims concern the debate as a whole. And a demonstration of their importance affects all the relevant theoretical accounts, as it will be further explained later in this chapter.

¹⁶For a detailed analysis of the following points, see chapter two. For representative bibliography, see Horton 1992; Simmons 1979; Raz 1979 and Wolff 1996.

generations of the difficulties with all these forms of actual consent are quite obvious.

As an alternative, hypothetical consent constitutes a thought experiment. If taken to be detecting the possible results of our deliberations and seeing them as having literal implications regarding our obligations, this needs to be asserted as positively as the actuality of personal consent and thus faces similar difficulties to those confronting the latter, as just explained above. If, on the other hand, it is taken as a heuristic device for detecting principled demands on reason then it is hardly relevant to the concern with actual, self-assumed acquisition of obligations characteristic of the voluntarist tradition. Such a heuristic device works as a moral route of conception of what ought to be a subject of agreement and agreement ceases to work as a literal expression of voluntary undertaking. The result is that it can be valuable when used as a framework for testing the legitimacy of principles for existing institutions on the basis of individuals' capacity for self-governance but not as a way of motivating political obligations in the first place. According to this understanding, the idea of reasonable agreement as the subject-matter of contractualism functions as a heuristic device for the formulation of legitimate moral principles which might then be applied to existing political institutions as they actually function and develop and determine their acceptability. This perspective gives a new direction to the role of social contract in relation to political institutions. The aim is not to prove a general obligation to obey the law but to find and to justify principles. This form of contractualism does not see its role as arguing for actual obligations. Actual obligation could only result in the (improbable) case of absolute coincidence between actual institutions and ideal principles. In general, it is a matter of practice: of whether the form and activities of actual institutions provide a proper application of legitimate principles, which involves centrally that these institutions stand in interaction with their citizens, who are able to change them if they do not satisfy their demands. Therefore, contractualists who make this use of hypothetical contract,¹⁷ in contrast with those who use it as a basis for obligation, are immune to the anarchist accusation that their starting point

¹⁷For example, Scanlon 1982, 1998.

is illegitimate. Instead of saying that we need political institutions to escape a state of war, as the voluntarist defenders of political obligation argue,¹⁸ they say that we have institutions anyway and must decide what to do with them. Hypothetical reasonable contract is, in their hands, a form of reasoning applied when we examine the legitimacy of the activities of political institutions from within and apart from an establishment of their bindingness. It functions only within the scope of the content of legitimacy.¹⁹

Hence, the overall result of the above considerations is that voluntarism establishes no general political obligation. These conclusions lead us to the deeper problem with the defenders' accounts. Taking the hypothetical contract theorists, the problem lies in that their use of the idea of hypothetical contract connects directly the existence of coercive structures with their bindingness in one and the same move.²⁰ Acceptability and obligation become through contract two inseparable parts of such methods of defence. The argument goes like this: defenders take it that if one can show that from a position of equality (depicted in the procedure of reasoning represented by the contractualist device of agreement) we would *choose* (contract to) a certain form of government, which therefore *merits to exist*, then we should *obey* a government which took this form. They start from the idea that we need institutions in order to escape an undesirable state of endless conflict, instability and danger. They aim to demonstrate how we can get out of this situation as quickly as possible, in order to show that what are good reasons for escaping it provide a basis for considering the alternative state of political organisation necessary and thus obligatory. Good ideas about how to avoid a state of war are provided as good reasons for obligation to the political alternative.

This approach conflates two separate questions. The first question is: *what principles should a government be bound by in order for its existence to*

¹⁸For the anarchist criticism of this illegitimate move, see the following paragraphs.

¹⁹For elaboration of these points, see chapter two of this thesis.

²⁰For theories of actual consent this is not a real problem. Due to its actuality (and as characterised by the conditions of validity presented in chapter two) this form of consent would succeed in connecting existence, legitimacy and obligation in one move if and whenever it took place: regular actual consent to governments would make them both acceptable and obligatory. Yet, actual consent theorists might be taken to join other defenders of political obligation in missing the point which, as I explain below, anarchism tries to stress, because they too start from the idea of consenting to *already existing forms of political institutions* and they do not take seriously the *constant* demand for their justification.

be morally justifiable? This is a question of *acceptability*. The second question is: *do we have a duty to obey such forms of government?* This is a question of *obligation*.²¹ The perspective of these political theorists is one which conflates these two different questions and deduces an answer to the second from an answer to the first. That is, good reasons for abandoning the state of nature become in their eyes principles of acceptability which also bind individuals to the form of government which meets these reasons. Thus they take it that by giving some answer to the question of justifiable existence they also prove the existence of political obligation. And the issue becomes an explanation of the acquisition of political obligation and not of 'the very possibility of obligations'.²²

But should this be so? Does not the collapsing of two distinct questions obscure the significance of each of them? The importance of the anarchist arguments and their results is primarily that they reveal the effects of this conflation and of the obscurity it creates for the debate on political institutions. The results of the anarchist criticism of voluntarist theories of political

²¹To an extent, this argument coincides with Simmons' view that the task of justification of the existence of political institutions, which is also challenged by the anarchist, is different from the task of justifying political obligation and that the defenders usually commit the mistake of collapsing the two (1999). But my argument does not advance this distinction and my aim is to transcend it and show that the anarchist aims are unified. In fact the challenge to the very existence of political institutions is the most characteristic anarchist position, although not the one obviously shared by all forms of anarchism. As explained in the introduction of this thesis, it is the challenge to the authority of the state, namely to political obligation, that is shared directly by all anarchists. In echoing Simmons' distinction at this point of the argument, I want to specify the different aspects of evaluation of political institutions that philosophical anarchism helps notice and clarify (it is the distinction between different kinds of evaluation that I share with Simmons, as it becomes obvious in my arguments in chapters one to four). But my final position is that the anarchist challenge to the acceptability of political institutions and the anarchist challenge to political obligation are linked in a way such that they show the anarchist position to involve a consistent and unified perspective. And that the distinctions observed by the anarchist are part of, rather than an obstacle to, this effect.

²²Ripstein 1992, p.219. Ripstein attributes this latter approach to Rousseau. So Rousseau is presented to be concerned with exactly this question while the above outlook is more prominent in Hobbes and, under certain readings, in Locke. On the other hand, Rousseau might be interpreted as not to be accounting for the problem of political obligation at all. And in a preceding paragraph on hypothetical contract, I refer to a contemporary development of that form of social contract influenced by Rousseau's idea of the 'general will' which is a promising improvement within this tradition and yet the task of which is distinguished from the problem of political obligation. Nevertheless, within the context of the debate on political obligation it remains possible that a development of Rousseau's own use of the general will could establish the possibility of political obligation and do so as part of a justification of the existence of political institutions, because his main outlook seems to connect the two in a way that addresses the anarchist challenge (see: Ripstein 1992; Habermas 1994, section III).

obligation reflect exactly what is missing in their approach: the failure of all forms of contract to ground political obligation on the very idea that they adopt shows that in fact they have taken too much for granted. From the anarchist point of view defenders of political institutions proceed from *an inadequate starting point. They assume what they should seek to prove.*

The anarchist instead separates the two questions and gives proper attention to the way a fundamental question underlies each of them. The question to be asked is not whether from a position of equality we would or would not contract to a form of political institution so as to show it acceptable and on this basis obligatory. Rather, the fundamental question is of whether we should have institutions at all: what contract would we make as to the existence *or not* of political institutions if we started from a position of equality?²³ This question lies at the heart of the anarchist position. In the case of political obligation it can be translated as a question about the very possibility of such an obligation. It is this question that the anarchist criticism of theories of political authority vindicates. Hence, the anarchist enters the political debate with a *unique perspective*. In the following two sections I analyse the process which grounds these claims.²⁴

5.2.2. The significance of the question of obligation.

The anarchist criticism shows that by focusing, through the device of the hypothetical contract, on good reasons for creating political institutions - qualities such as justice or their accomplishments such as the provision of valuable goods - the defender does not prove the relationship needed for political obligation. He does not create a moral basis which characterises the particular interaction between each and every individual and the institutions which govern the society where these individuals live. He merely provides reasons for wanting them when these institutions have these qualities and which would generate political obligation only if such qualities were constantly

²³This question relates to what would be an accurate account of *how things would be without institutions*, which is what the hypothetical contractualists' representation of the state of nature lacks. For this point see my analysis below.

²⁴The following analysis is introduced in the first chapter of the thesis. The role of the present chapter is to give a detailed and complete examination of these arguments in order to establish the position of this thesis as outlined in chapter one and defended in chapters two to four.

proved to be translated into the specific practices of institutions and their interactions with each and every citizen. So the defender fails to prove general political obligation and this is reflected in the way each theory fails to meet the four conditions characteristic of the nature of the organisations they are offered to support. Once he enters the debate on political obligation, it is this criticism which the defender needs to understand and to adopt this perspective to the problem, in order to address it properly.²⁵

This problem is related to the special nature of political constraints, as indicated by the anarchist argument about their undesirability. They are exclusive and authoritative. They involve the kind of coercion, centralisation and hierarchy which is characteristic of a situation where some are ruled by others. They *are* the external constraints which define relationships of unequal power and subordination. That they can be evaluated on the basis of moral virtues that they demonstrate shows that their existence is defensible. But it shows only this. It does not show that they stand in a legitimate relationship with their citizens. And it does not show that they can be justified once and for all. Rather, the limited defence which their very nature allows, shows the defects involved in political institutions and the difficulty created for their justification by those defects. It is the character of justification appropriate to them and the limitations of their justification that the anarchist criticism indicates.

The result of the defenders' failure to ground political obligation is that institutions lack a very central feature of their existence, namely the special relationship which is to characterise their coexistence with individual citizens. This result has an immediate influence in changing our attitude to our position in political reality and thus it already affects significantly political institutions.²⁶ But, and through this influence, it also motivates a further question: how can institutions, even if we still need them, exist and function when they lack any

²⁵These considerations, as analysed in chapters two to four, provide a detailed way of advancing the anarchist complaint that the arguments of the defender are based on previous, unproved assumptions about what our basic moral duties are and what the best way of discharging these duties is (for this complaint, see Simmons 1999, pp.766-769).

²⁶Again, this is what characterises mostly the anarchist subversive campaign, as explained by philosophical anarchists themselves (e.g. Simmons 1979, pp.200-201).

special relationship which characterises them as political?²⁷ This question becomes the first sign of how the challenge to political obligation might translate into a more general challenge to political institutions. If political institutions lack the relationship of political obligation, why aren't they seen as maybe desirable yet optional social organisations? And if their political nature (especially their coercive, monopolistic and centralist character) does not allow them to be so, why have them at all? These considerations throw light to an argument about how the question of political obligation generates a challenge to the existence of political institutions. The anarchist criticism presses the defender to account for the very possibility of political obligation and the results of this perspective vindicate a doubt about the very possibility of political institutions themselves. The question we begin to ask is *whether there is anything at all about political institutions that merits our support*. Below I explain this argument.

In attempting to justify the existence of political institutions, the defender is on the same terrain as the anarchist: he accepts that the necessity of political institutions needs to be proved and sets to provide arguments for exactly this matter. But, in the way in which he develops his arguments he does not address what he means to address. Through the arguments from the state of nature, the defender demonstrates merits of the institutions which make them desirable, but he does not depict their defects too.²⁸ He does not account

²⁷Because to *direct*, *coerce* and *be obeyed*, which the justification of political obligation would give them the right to do, *is* to be political.

²⁸Hobbes argues that the state solves the problems of conflict and coordination which the state of nature creates. For Locke, people in the state of nature fail to know what the moral laws demand and when they know it they fail to enforce it, so they need the state. For Rousseau, they come to a situation where natural freedom cannot be secured anymore and where a higher kind of freedom is needed, which can be established only in civil society. The way Rousseau sets to develop his arguments for civil society however tends to remain valid because he conceives from the beginning and remains faithful to the demand that political institutions can be justified only in terms of a very valuable thing that we loose in abandoning the state of nature, namely freedom, and that they should be shown to be doing very well in this respect. That constraints take freedom away might never be justified unless they offer something which corrects this loss. This approach does take into account the demand that we attend to the defects of political institutions and not only to their merits. This comes also from the fact that Rousseau guards against socially affected readings of the state of nature and he sees the less pre-social attitudes which create war as the features of a situation which is an intermediate stage between the state of nature and political society (see, e.g., 1762, book 1, ch.6). Nevertheless, it is more likely that Rousseau's project concerns a conceptual analysis of the form of justification which would legitimise institutions as they already exist rather than a justification of their existence (see note 22 above).

for the fact that in themselves constraints are undesirable - they take away freedom and create relations of unequal power - and thus the merits which might motivate them need to be considered in the light of this defect. They need to be considered in the light of situations which lack constraints and to be constantly asserted. Characteristically, he fails to present what a genuine pre-social situation would be like. And he does not present fairly in the state of nature the non-political, social alternatives in terms of equally important merits which they might involve, nor does he compare political institutions to them in view of such merits. Ultimately, there is no proof, no conclusive explanation on the part of the defender that the state of nature ends up in a state of war.²⁹ The defender addresses only those who have learned to need political institutions and learned to desire them anyway.³⁰ What his argument really achieves is to show that once we are convinced that we need them political institutions can sustain this conviction, and it presumes that they merit

²⁹It is indicative that although the anarchist is justifiably invited to prove whether social order and cooperation would be possible in the absence of coercive structures, the arguments of the defender of the state, characteristically in game theory, preclude this possibility rather than explaining the failure by taking into account both the difficulties and the advantages involved. Defenders have not provided yet a convincing explanation of why political institutions are the only viable and desirable solutions. For example, the descriptions of the problem of scarcity and of human motivation in the imaginative state of nature are presuppositions of the theorist which favour the state rather than explanations of universal facts or universally accepted beliefs about human situation. Descriptions which are favourable to non-political solutions are excluded for no decisive reason (for relevant arguments, see Kavka 1983 and Sanders 1996, pp.264-265). Very importantly, this is rooted in traditional theories (for example, in how Hobbes failed to use his methodology of hypothetical contract correctly) in a very basic way (although Hobbes attempted to avoid this failure and did better than others on this): these theories depicted in the state of nature aspects of human behaviour which are more the effects of socialisation, of institutions as we live them and of what becomes "natural" within them, rather than of a pre-social situation; they added to it more facts about human nature than they should have (for such an argument, see Rousseau 1762, book 1, ch.2). Only a clear view of what a pre-social situation would be like could lead to valid conclusions about political institutions. Such a view would throw light to both their merits and their defects. And even if anarchists might also make their own assumptions under the influence of socialisation, their views are by their own character more likely to facilitate a proper description of a neutral situation; and the present argument removes a very important burden to an assessment of their views which also applies to this assessment equally. Most importantly, the fundamental question which the anarchist perspective reveals already reflects the significance of this argument and shows the anarchist to concede to it in a way that the defender does not. For this latter point, see the rest of my analysis in the present chapter.

³⁰To ask accurately how things would be *without* institutions means that we need to go beyond the hypotheses we make about political institutions when we are already affected by them and to try to see what is really natural. The assumptions of the defenders fall short of this and the fact that they focus only on the merits of institutions and not also on their defects reflects this weakness. Also, these failures are already represented within the debate on political obligation itself, by the failure of theories of this obligation to transform general qualities into specific interactions.

it once and for all. The anarchist demand on the defender is to do instead all that is required from him once he enters the terrain of the justification of political institutions. And in this respect the anarchist perspective is one that needs to be shared by every theorist. In the debate on political obligation this demand becomes explicit and, as I argue, this helps redirect the defender to the proper approach.

Political obligation is a relationship which is normative, enduring and exacting. An adequate defence of it overrides ideas merely about what we have and what it would be good for us to do. It concerns the difficulty of particularising the relationship of government through an actual relation to political practices on the part of the individuals affected by them. And this process extends beyond a demonstration of the merits that certain forms of political order might initially have.³¹ Some defences of political institutions, which are central in political philosophy, move on too quickly. It is these that I am concerned to apply the anarchist perspective to. We should see the role of the anarchist not in a tendency to refute all and every evaluation of the state, not as adopting the position of the sceptic and waiting for offers to reject. There are evaluations of governments, those which do not examine the problem of political obligation and do not attempt to motivate their existence in the first place, which might preserve the possibility of a satisfactory account. But the role of the anarchist is significant in her addressing only those who engage with the fundamental worry represented by the anarchist scepticism and in saying that the relevant theorists have not confronted the implications of such an endeavour.

When the defender claims that we need the state as an exit from a state of war he enters a territory which involves a very demanding approach. He invites the question of the very possibility of institutions and by this he embarks on the anarchist boat. Once he embarks on the anarchist boat he cannot leave it easily. When the theorist claims to defend political obligation, he undertakes the task of establishing whether or not there can be such a bond. But the form that his claims take shows that he has dismissed in one

³¹These states might 'merit our support' but this 'is not at all the same as saying that they have a right to direct and coerce us, which we are bound to honor' (Simmons 1999, p.70). And, as we shall stress below, they are not guaranteed to merit support once and for all.

impatient movement a worry that does not go away. *Rather than adopt the assumption that we need political institutions, and then try to assert their merits and derive our obligation from them, he needs to deal with the prior question of what it is that institutions demand of us and whether these demands can themselves be justified.*

By showing that the theories of political obligation do not establish the particularity which would guarantee the ideal of active participation, the anarchist criticism indicates that political institutions lack, in one fundamental way, the ability to generate and protect this important practice. This is already a defect and, in turn, it reveals and advances a fundamental demand: the real challenge is to show whether political institutions are any answer at all to the concern with proper relations within social life. And for this purpose, it is not satisfactory to show them to be good enough as the most directly available social possibilities. Theorists are invited to realise that they should start to view political institutions as minor evils, as possible solutions to social problems which nevertheless carry their own problems and thus remain disputable.

The anarchist argument about the importance of self-governance plays a crucial role in supporting this approach. The capacity to determine their life and act on self-imposed constraints is indispensable for the survival of and proper relations between individuals. Within social life, it can be realised and expressed through active participation. The absence of political obligation under any comprehensive account of it indicates the absence of such a participation within existing political societies. The main defect of political institutions is that their coercive character establishes and cultivates exactly the kind of relations which make equal, active participation impossible: those who rule participate actively and determine the constraints imposed on them and on others. Those who are ruled do not participate and suffer external constraints. That institutions do not function on the basis of morally justified political obligations opens the way for us to see what they seriously lack: the kind of participation which activates self-governance and the relations of equal power which this presupposes. This is a pressing problem to take into consideration when we try to evaluate them.

The anarchist perspective applies to the other theories of political obligation - of which theories of hypothetical consent have been used in this part of chapter five as a representative example - in the following way. Defenders of the state who implement the criterion of justice and the idea of reciprocity involved in the principle of fairness take the existence of institutions for granted and rush to base the legitimacy of certain forms of them on their preferred moral ground, justice or fairness respectively. Theorists infer a perspective of legitimacy by asking what the principles for just or fair institutions are, they deduce obedience from the justice- or fairness-based general character of the forms institutions might take. But anarchist arguments against these theories show that success is far from secured, and that this does not lie in the falsity of the criteria chosen but in the very thing that is supposed to be defended on the basis of them, to wit, in political obligation. Firstly, general ideas about the character of political institutions cannot base a special relationship to them. Secondly, even when such arguments base certain claims about the desirability of political institutions, the results of the debate on political obligation show that in the way these claims are promoted they cannot decide the existence of political institutions and to motivate their acceptability once and for all. In contrast with the perspective of such defences of political institutions, the anarchist makes the question of whether we need institutions at all a persistent demand and appeals to consent, justice or fairness to solve *this* problem.

5.2.3. Justification as an endless process.

It is a crucial feature of the anarchist perspective, concomitant with the primacy of the question of obligation which this perspective suggests, that the anarchist insistence on the question of obligation shows that even if a theorist proves the state to be justified once, the task of justification does not end here.³² It is in this respect that, under the influence of the anarchist position, the debate on political obligation puts *any* justification of political constraints on a new basis. The anarchist may grant that the defender has given a good

³²This is a point already involved in the preceding argument. My aim here is to highlight its special force within that argument.

reason for creating political institutions, that they help us avoid serious social problems and this can out-balance their defects. But this justification is limited by the very fact that it is given only once. Since the defender grounds the state on the basis of certain values - such as peace and security, justice and ultimately freedom itself - he should be able also to account for it whenever it violates these values. The moment when institutions threaten the values with regard to which they are first proved to be acceptable, their validity ceases. It is this possibility of *illegitimate constraints* that concerns anarchism most.³³ This means that *the demand for justification is constant*.

The way in which the anarchist attention to illegitimate constraints is advanced through the question of political obligation helps vindicate this demand. Political obligation requires an actual relationship the particular aspects of which need to be constantly affirmed, applied and renewed. The question of obligation is distinctive and valuable in that it arises at every point. This throws light to the fact that, in a similar manner, the anarchist attention to illegitimate constraints makes the need for justification persistent more generally. Constraints are not desirable in themselves. They always take something away. External constraints remove our freedom to determine our own lives. So they need to be continually defended in terms of the values they are held to be protecting, to counterbalance what they take away and thus respect our status as reflective human beings.³⁴ This is an alternative way of ensuring active participation. Political institutions are to be always viewed as evils, even minor ones: they might help us to avoid certain social problems but they continue to carry their own, the unaccountable imposition of which needs to be guarded against. The moment they cease to serve their duties they are no more wanted. They simply limit our ability to determine our own lives and thus they exist on the basis of inappropriate interpersonal relations. The defender of political institutions might say that there are mechanisms for testing their activities. But it is here that the anarchist has the privilege to press the interrogation further, to insist that the theorist should bear this in

³³It is their presence that undermines the quality of relations between people, which is the focus of the anarchist challenge in the first place.

³⁴They can thus be seen as compatible with the situation appropriate to persons, namely as beings determined by self-imposed constraints.

mind and apply the test regularly. It is then that every theorist must realise that he has not engaged sufficiently with the process of justification and that the work that awaits him is not easy. Once you embark on the anarchist boat and you want to complete the journey, you have to remain in it as long as the destination requires.

At this point, a summary of the process through which anarchism contributes to the debate on political obligation and raises a new demand with regard to the justification of political constraints might be helpful. In the process of providing arguments against accounts of political obligation the anarchist establishes a horizon within which opposing claims about our relation to political institutions are weighed against each other. The result of this dialogue as derived from the anarchist criticism is that no defensible principle of political obligation can be reasonably accepted and thus so far there is no general political obligation. This alerts the defender of the state, not only as to the failure of his account, but also as to the very instability of an aim to establish constraints in terms of political obligation. The failure of any general principle of political obligation to heed the moral criteria which the defenders of the state use and which anarchists themselves stress, is alarming. The instability of defences of political obligation which this failure reveals, highlights the importance of confronting the fundamental question of whether we should have political obligation at all.³⁵ Thus the anarchist's demand, implicit in her criticism in the first place, to understand the real implications of this question for political institutions and to ask it properly, comes to the fore. The arguments of the defenders of political obligation and the counter-arguments of anarchists need to be assessed in this light.³⁶ Also, the anarchist criticism confirms that the moral criteria used in accounts of political obligation are not themselves flawed. Voluntariness, justice and fair participation survive the failure of these accounts. This motivates the idea that

³⁵The result of anarchist criticism reveals the difficulty of defending political obligation and shows that '[o]bedience remains as much in need of justification as disobedience' (Simmons 1979, p.200; 1996, pp.38-39, note 30). This, in turn, redirects us to the fundamental question that motivates the anarchist in the first place.

³⁶Having in mind the fundamental question about the very possibility of political institutions, the philosophical anarchist does not neglect but rather concedes to the demand that anarchists provide and defend their own ideas and social alternatives. And her prior picture of ideals of legitimacy is offered in interaction with (political) anarchist replies to this demand.

they can continue to be used in further attempts to decide the nature of our social relationships.³⁷ And even if it is proved that the existence of political institutions is necessary,³⁸ this necessity is not firm and such moral requirements may still be applied in deciding the forms of imposition that are enough to motivate it. The demand for justification remains constant and in the face of the importance of the question of obligation and the failure to answer it which the anarchist challenge establishes, as well as of what this shows about the character of political constraints, it becomes more pressing and more difficult for the defenders of any operative forms of imposition - institutions, laws and policies - to address.

Hence, there is a way in which everyone should start from the anarchist question: what is the point of having institutions and what is it that they demand of us? And from this to pressingly ask regularly whether our institutions are justified in terms of certain values.

5.2.4. The anarchist ideal of legitimacy.

The anarchists always focus on what institutions *take away* and not only on what they have and give. This focus is necessary for every theorist who wishes to obtain justification. And it is what makes the task of justification harder. By asking whether there is any point in having constraints at all, the anarchist advances the question of whether there is any constraint which it is

³⁷These criteria are demands that *cannot be reasonably rejected* by, and thus are appealing to, the rest of us. They thus retain their validity as standards within the very process of argumentation during which different reasons interact towards a delivery of a common basis of justification with regard to the problem of political obligation. In other words, they can be seen as general principled conditions within the framework of the debate. As I explain in the first part and in the following paragraphs of this chapter, these criteria constitute central elements of ideals of legitimacy which are implicit in the anarchist perspective and motivate the anarchist criticism in the first place. The anarchist enters the debate with a positive and comprehensive view of the demands it involves (and this remains her own proposal whether or not the rest of us would agree to adopt these criteria). Furthermore, and importantly, the anarchist criteria can apply as tests in any further justification of constraints, still in the light of the implications of the debate on political obligation.

³⁸This does not mean that the question of obligation is answered. As argued in this chapter, theorists cannot build their defences on the basis of a presupposition that we need political institutions, because the relationship of political obligation overrides demonstrations of institutional merits. Thus a proof that we need institutions does not establish that the relationship of government is justified (i.e., that we have general political obligation) nor that we need them once and for all. It rather raises the demand that, in the absence of such justification, every form of institutional constraint needs to be motivated regularly in terms of legitimate principles or other applications of moral conditions.

unreasonable to reject. This makes the question of justification a persistent process of interrogation. The anarchist perspective then represents an indispensable and unified position which re-introduces a very pressing demand. In the following paragraphs I attempt to make the implications of this challenge clearer.

The anarchist position prevents people from inventing political institutions. The anarchist's twofold aim is, first, to show the illegitimacy of political institutions (which is exemplified in the philosophical anarchist arguments against accounts of political obligation and in the political anarchist additional detection of the evils of political institutions) and second, to work for their removal (which is distinctive of political anarchism). I remain agnostic as to whether this latter is an achievable aim. This is a substantial question to put to anarchism itself and I will discuss it in the conclusion of this thesis. But even if the anarchist does not succeed in sustaining her contention against political institutions, even if, that is, we conclude that we need some form of political coercion, the role of the anarchist challenge does not disappear.

I explained in the preceding sections that the need to prove the existence of an actual obligation arises constantly. And that by stressing the question of obligation, the anarchist alerts us to the demand that the need of justification of forms of imposition is continual. That we might need to have institutions does not mean that any form of constraint is enough to motivate them. What we need then is a proper test for deciding what forms of imposition are legitimate. This aspect of the contribution of the anarchist challenge establishes the demand that *every constraint is in need of justification*³⁹ and thus any new form of institution should pass a test of legitimacy in order to be accepted.

³⁹In terms of the very thing that it is said to protect (more often than not), basically freedom. Freedom is indeed the primary anarchist concern when the anarchists stress the importance of focusing on what institutions take away. That institutions provide order and cooperation, security and peace, might never be enough to compensate for the loss of freedom they involve (for a manifest observation of this difficulty see Rousseau 1762, esp. book 1, ch.6). Ultimately only a form of society which offers its services while simultaneously preserving freedom would be justifiable (ibid.). A very good reason for giving freedom such priority is that in its most basic form it is the capacity for self-preservation itself (ibid.).

The question of legitimacy⁴⁰ thus becomes more pressing when the defender of political institutions returns to it via the anarchist challenge.

The anarchist provides such a test of legitimacy. Throughout my account of the anarchist criticism of theories of political obligation, I explained how anarchist ideals of what a legitimate state would look like are involved in it. How the moral criteria which define the relations that these ideals describe are characteristic of the very concern that initiated the anarchist challenge in the first place. That criticism, far from being merely negative involves attention to these requirements as part of it. The anarchist perspective itself - the questions it raises, the process of argumentation it offers and the results it delivers from the dialogue about political obligation - involves inherently these criteria. In its development the anarchist criticism clarifies that the values used in theories of political obligation if successfully combined with the conditions of political obligation, would offer acceptably complete accounts of this duty. And such accounts are translated by the anarchist into ideal pictures of proper social relations between institutions and individuals and between citizens themselves. Voluntariness, justice and fairness are strong and generally acceptable requirements. They have been used in the form of general principles for evaluating the character of political institutions. And the anarchist indicates that they need to continue to be used in such a way with regard to every function of institutions. Also that they can be used to determine social relationships if transformed into actual features of the specific interactions they are meant to characterise.

Thus the anarchist *ideal of legitimacy* lies at the centre of the positive character of the anarchist argument. It is the normative horizon established by

⁴⁰In this context, 'legitimacy' continues to designate the aspect which is correlative to political obligation and thus to determine assessments to this problem. But, more importantly here, it acquires an additional use: it applies according to the idea that even when we accept the existence of institutions, in the absence of political obligation we need to show that any arising forms of coercion are not arbitrarily imposed on us but are rather *compatible with acceptable moral values*. This idea was analysed in the preceding paragraphs and it is explained further in this final part of chapter five. This latter sense of legitimacy functions among the various senses of it used in political debates which are distinguished from the problem of political obligation, and it can be effected through, or be identified with, some of them. Such senses are, for example, that the government is legitimate because of its good qualities, or when 'it has acquired its political power in the proper way (e.g., by free election ...)' or, in an international context, 'if it is recognized as legitimate by other governments' (Simmons 1979, pp.40-41 and 197).

the debate on political obligation as defined by the anarchist criticism. That is, it functions in the form of ideal accounts of social interaction which constitute normative standards that determine the considerations we put forward when we seek to justify forms of social organisation as a common basis of our responsibilities and actions.⁴¹ These standards, in the light of the failure to justify political obligation, help further evaluations of institutions by imposing the relevant moral criteria as principled conditions on existing and newly arising forms of coercion.⁴²

Hence by stressing the question of obligation, anarchism ends up affecting a more general approach to political institutions. It offers a proper test to be applied to and determine any defence of constraints. Even if political institutions are proved to be wanted, the criteria of legitimacy which anarchism supplies provide a standard by reference to which defenders of those institutions can attempt to maintain their desirability: we examine what demands are put on political institutions, what is needed to motivate them in every instance and in view of what is owed to particular individuals. The anarchist versions of an ideal of legitimacy provide a new horizon for political argumentation and make legitimacy exigent because it is difficult to see how institutions can meet their requirements.⁴³ Through this, the ideal of legitimacy reaffirms the force of the question of obligation: the more difficult it is for existing institutions to satisfy this standard, the more the anarchist concern with the possibility of obligations is strengthened.⁴⁴ The anarchist perspective is once

⁴¹As explained at the beginning of this chapter, this involves that the test applies to anarchist social visions too, which do not have the nature of the 'political' and do not involve the relationship of political obligation but still need to be assessed in terms of the voluntariness, justice or fairness that the social interactions characteristic of them are meant to exemplify; and which, more generally, need to be proved to be morally acceptable social forms.

⁴²Two possible ways of ensuring that political constraints attend to these values are that such conditions function either as legitimate general principles with which those constraints should be proved to be compatible, or as '*enabling* conditions [...] for the legal institutionalization of [...] discursive processes of opinion- and will-formation through which' we can authorise constraints (for the latter idea see Habermas 1994, pp.12-13). The extent to which these models become appropriate ways of heeding the demands of the ideal of legitimacy and the idea of active participation it represents depends on the implementation, structure, regularity and efficiency of the mechanisms we establish for their realisation.

⁴³The anarchist ideals are probably unattainable and even if existing institutions were at some point entirely guided by them the continual need to verify this application would make this fact unstable. Still, this allows to remain meaningful the also difficult task of ensuring that institutions are constantly assessed by and tend to approximate to these ideals.

⁴⁴In the end, the anarchist insists on and gives new force to the realisation that the task of the theorist of political institutions becomes meaningful and valuable when identified within a

more vindicated: political institutions cease to be viewed as lovable and they need to be tested on the basis of the problems they create. Furthermore the anarchist ideal explains the link between philosophical and political anarchism: it reminds us of the enduring deficiency of the state as a position which is initially shared by both forms of anarchism; and the moral conditions involved in it as part of philosophical anarchism are aspired to be inherent in aspects of the society which political anarchism seeks to realise.

Finally, the anarchist perspective brings together Raz's argument about how political institutions can be compatible with freedom and an insistence on the special role of choice in sustaining self-imposed constraints as the only ones appropriate to human freedom. In chapter one we explained the difference between two distinctive views for respecting autonomy in political societies. The one was that freedom can be allowed in a government which serves good reasons even when this government is not autonomously chosen. The other was that individual choice is indispensable to freedom. Raz's position that autonomy is respected when government serves reasons which apply to individuals themselves represents the first view. And the way of assessing political institutions defended by the anarchist results in Raz's view. Yet, as also argued in the first chapter, this view does not alone address the concern with freedom which underlies the demand for justification. For this, the role of choice needs to be asserted: it is important that through government we *remain* free. Through the anarchist criticism of theories of political obligation we understand that this demand involves recognising the importance of the question of political obligation and of the difficulty of addressing it. This is a way of asserting the importance of choice for securing self-government. And it directs to an alternative way of respecting choice. Recognising in light of the absence of political obligation that constraints need to be assessed and be justified on the basis of the values of the ideal of legitimacy as it traces harms to particular individuals is a way of affirming choice without facing the difficulty which accounts of political obligation based on choice face - a difficulty which Raz himself has pointed out correctly. It thus is a way of

background of accounts of 'limited government' (Raz 1990, p.12). And such a background, as explained throughout the thesis, involves centrally a focus on quality rather than quantity as far as the acceptability and implementation of the demands of the state are concerned.

returning to Raz while sustaining the fundamental role of individual choice for political justification. Such a justification is based on the idea of self-imposed constraints, which removes the appearance of a paradox in the relation between constraints and freedom.⁴⁵

5.3. Conclusion.

The distinctive perspective of critical philosophical anarchism is that it revives the question of whether we should have political institutions by questioning our obligation to them. The criticism of accounts of political obligation that it provides and the results of that criticism raise this question, which has been overlooked for too long in discussions of political authority. Rather than promoting a duty to justify constraints, anarchism *makes compelling a duty not to accept illegitimate constraints*: it focuses on what constraints take away and thus on the need to account for the point of their very existence. Critical philosophical anarchism makes us think what freedom and its loss imply for the way we want to defend political institutions and helps us re-establish our methods of justification. It offers an indispensable outlook: it re-assesses the very approach to political authority that has incorrectly been used hitherto as a starting point for the debate and offers a clear view of the character, possibilities and problems of political constraints which points out and corrects for this approach. It thus establishes a new horizon of argumentation, where the possibility of political obligation and the need for justification remain a persistent concern and are harder to obtain. This perspective constitutes the core of the anarchist contribution to the philosophical debate on political obligation. And it is in this respect, namely in adopting this perspective, that, I claim, political theorists need to acknowledge the terrain they share with anarchists. At the same time, the anarchist position preserves its authenticity. It is not about putting limits on political institutions out of a concern to preserve them. It does not put emphasis on the justification of the legitimacy of the state. The anarchist is motivated by the

⁴⁵For this seeming paradox see chapter one, section 1.1.

problem of subjugation, the way in which improper relations between people undermine them. The defect of political institutions detected through the anarchist criticism of political obligation is that political constraints, by their very nature, tend to accept, cultivate and establish that subjugation. In the end, the anarchist position is rather about *how difficult it is to substantiate political legitimacy*.

Conclusion.

In this chapter I provide concluding remarks in terms of an overview of the preceding discussion, which further demonstrates the distinctive contribution that critical philosophical anarchism advances in the debate on political obligation. I also examine the implications of this contribution for anarchists in general. There are two main parts to this examination. In the first part, I provide some considerations about the tasks of political anarchism in relation to the contribution of critical philosophical anarchism. Second, I discuss what the view of critical philosophical anarchism proposes for addressing concrete dilemmas within existing societies governed by the state.

6.1.Overview of the results of the thesis.

The examination of theories of political obligation from the anarchist perspective issued in the following key conclusions:

- 1) None of the most comprehensive theories of political obligation, nor their combination, provides a persuasive account of such a relationship. Thus there is no general political obligation as a special political bond which determines the relationship between individuals and the governments of their countries of residence. This, in turn frees our view of political institutions from a presumption in favour of obedience and encourages a critical approach to their construction and specific demands, which represents a different outlook to political reality and our position in it.
- 2) Part of the above outcomes (in point 1) is an emphasis, through the anarchist criticism, on the importance of establishing the existence of morally important features of actual, specific interaction between governments and each of their citizens as the only proper and satisfactory basis of political obligation, as well as on the difficulty of such an endeavour. These are the aspects which the accounts examined fail to provide for, something that is reflected at the theoretical level by their failure to meet one or more of the conditions of political obligation, which together are expressive of the political nature of such bonds. But the

character itself of the relationship required indicates the inevitable instability of such accounts: the resulting failure reflects and highlights the endlessness of a process set to discover and maintain particular and morally acceptable interactions which establish authority within a world of nation- and multination-states with extensive government over huge and variable populations. This in turn suggests that support of political institutions should probably move towards a different direction.

- 3) Another part of the anarchist criticism and its results, concomitant to the preceding one, is that they verify and maintain the importance and desirability of the moral standards which are offered as bases of political obligation. These uncontroversial grounds are the central elements of ideals of legitimacy which constitute paradigmatic demonstrations of the relations which would characterise a legitimate society and its active citizenship, and which existing societies do not meet. But these values also work as general moral criteria which the ideals of legitimacy force on the assessment of political constraints as they exist and arise in the absence of political obligation.

Chapters two to four provided a detailed discussion of the anarchist criticism against leading positions within the debate on political obligation. This discussion reformulated their central claims and offered the elements which may be used as the defining features of a more comprehensive and positive position involved in the challenge of critical philosophical anarchists. My discussion sought to challenge the view that the theoretical project of critical philosophical anarchism is a merely negative and academic position. The discussion in chapters two to four anticipates a more complete reply to this accusation, not only with its supply of the elements which are the main factors of such a reply but also in being a genuine representation of the deepest anarchist concerns. Its revelation of the particular character of the debated relationship as well as of the difficulties that this creates, represents and justifies the primary commitment to freedom and hostility to coercion, which is at the heart of anarchism, as well as its corresponding attention to a creation and protection of proper relations between persons within social reality. Finally the discussion establishes a new horizon for the continuation of political dialogue, one involving a fresh starting point and carefully specified demands

both in the direction of the defender of political institutions and in the direction of anarchism itself.

Chapter five followed with a direct demonstration of the significance and value of the above picture. This demonstration is concentrated on the distinctive contribution of critical philosophical anarchism in the direction of defences of political constraints. The central elements of this contribution are found in the special perspective which characterises anarchism and the ideal of legitimacy which it involves as already detected in the discussion of the previous chapters. In this chapter these elements are elaborated as follows:

- 1) The anarchist approach to political obligation reveals the mistake made by traditional theorists of attempting to derive it from general positive qualities of political institutions which may be used to account for their existence and desirability. Anarchism reveals that theorists begin from a wrong starting point and make very quick moves towards a justification of political obligation: they are guided by an assumption of the necessity of the state and focus on its possible merits in a way that neglects its defects and reflects an inaccurate depiction of what life without political institutions would be like. And they attempt to derive political obligations from these merits. But they pay no attention to the particularised and enduring character of political obligation, which, being at the heart of their failures, itself shows that they have not asked properly the fundamental question that needs to be asked, namely of whether we should have political institutions at all. Thus they rush to defend political obligation in a way that leaves behind the prior and essential basis of any possible defence. The failure of their accounts and the specific aspects of this failure, which the anarchist criticism reveals, redirect the defenders to the root of the weakness of their theories and to a perspective that they all need to share.
- 2) This approach is carried to wider evaluations of constraints. The attention given to the question of political obligation and the accompanying clarification of the demands and difficulties that it involves shake the grounds of other supports of political institutions. First, the view of political relations which the results of the debate on political obligation force on us, already changes our approach to political institutions. Second, the absence of political obligation itself constitutes a serious gap in the status and function

of these institutions and thus by itself it makes us question their validity and viability. But third, and most importantly, the attention given to the issue of political obligation shows it to reveal a demand that underlies more generally our view of political constraints. Through the question of political obligation the fundamental question of whether or not institutions should exist and the initial view of political institutions as enduring evils which it represents become the starting point and determining basis of any attempt to evaluate them. Thus when we try to show the desirability of political institutions in terms of general qualities and accomplishments or to justify their particular activities, the only way to understand the real force of these aspects is to apply them within a background defined by the fundamental question. In this respect the demand for their justification becomes harder.

- 3) The anarchist is concerned with the imposition of illegitimate constraints. Political institutions exist and there might be no point in attempting their removal. And philosophical anarchists need not be, and are often not, committed to overthrowing institutions. But the fundamental question that the anarchist reminds us to ask throws light to the fact that even when political institutions remain necessary despite the absence of political obligation, the defects of political coercion can be counterbalanced only if its arising instances are shown to serve the values which they are claimed to serve in the first place. But for this to happen, every existing and every arising form of constraint needs to be shown to actually respect these values and to continue to do so in every instance of its social function. Political obligation is a relationship which is enduring and exacting because of its actual, particularised and normative character, which reflects the implications of the fundamental political question. This is what makes its justification an endless and probably unattainable task. This fact might not condemn political institutions to non-existence but, in the light of the failure it involves, their assessment itself becomes a more difficult and a persistent process. Thus the demand that we pay attention to the defects of political institutions represents the central concern with preventing illegitimate constraints and so carries with it the demand that we assess these institutions regularly in terms of the merits on the basis of which they can be acceptable forms of

social organisation. The general anarchist message that it is very difficult to justify political institutions is now evident and pressing.

- 4) Given the reasserted demand for justification, the anarchist ideal of legitimacy acquires a newly formulated and important role. In its function as a paradigmatic depiction of the form of societies where political obligation would exist, it works now also as a reminder of what it is that the defences of political institutions need to do as long as societies fail to assimilate this picture. It becomes a test on political constraints in terms of the central values of voluntariness, justice and fairness which it provides as criteria for their assessment. Thus, in addition to the reformulation of the demand that it establishes with regard to justification, anarchism provides a proposal of how to apply this demand. And this proposal is one that applies to the anarchist too: despite their lack of institutionalised coercion and of political obligation as the bond which characterises their social relations, the general character of the visions of political anarchism and the social interactions which they are offered to involve should reflect the moral values of the anarchist ideal. This relates to the problems with coercion and stability which anarchism itself faces and which I discuss in the final part of this chapter.
- 5) The appearance of the paradox, that we are ruled because we don't want to be ruled, with which the anarchist challenge to defences of political institutions began, disappears, since the new test of legitimacy shows a way in which political constraints become constraints that individuals put on themselves and are expressive of their own participation. As anticipated in chapter one and explained in chapter five, the anarchist insistence on self-government results in the view defended by Raz, which asserts the realisation of autonomy through the application by the state of reasons applying to individuals themselves, yet via an establishment of the important role of choice as affirmation of self-government. Such choice need not have the form of actual particular consent (and the failure of defences of political obligation shows that this cannot be achieved), but it needs to be affirmed in the existence of constraints which are of a quality such that reflects an authentic participation on the part of individuals in the workings of government. In this way, the approach of political theorists ceases to look

paradoxical, because they can show that the political constraints which (they claim) we (should) accept are part and indications of our very willingness not to be externally and arbitrarily constrained.

- 6) Thus every theorist needs to share the anarchist perspective. The anarchist versions of an ideal of legitimacy must become a general testing ground for every evaluation of constraints. This throws new light on the subversive campaign which advocates of philosophical anarchism are committed to. The different perspective of our position within political society which this campaign establishes and the corresponding removal of the habit of compliance, at which it aims, become an expression of an innovative position. As philosophical anarchists themselves argue, these changes do not lead to widespread disobedience and chaos since the absence of political obligation does not destroy other assessments of institutions and since it does not eliminate the existence of other important moral reasons for support of them. Also any change of political reality that they encourage is gradual and part of a large series of careful, well organised and patiently applied efforts. Yet the perspective and demands which critical philosophical anarchism is shown to involve, imbue the anarchist campaign with a *radicalism* which has not been detected by its advocates. The fundamental question which the anarchist critique of political obligation exhumes and advances and the process of justification this question entails show that the presumption removed by the anarchist enlightening campaign and the critical attitude it cultivates are indications of a more drastic challenge to political institutions. That this challenge and attitude function within a framework which makes appropriate the support of government only to the extent that it does enough to protect us; and are themselves expressions of a constant reminder of the enduring diffidence of the state, of the unacceptability of illegitimate constraints and of a project towards actual social changes. With the demand for the limitation of political power to aspects which reflect moral *quality*, the insistence on the importance of choice for self-government and a view of political constraints as acceptable to the extent that they are compatible with this capacity of human beings and the reasons with which it is expressed join together into an insurgent perspective. Eventually critical philosophical anarchism meets political anarchism. It follows political

anarchism in becoming a constant guardian of the corruptive tendencies of the state which political anarchists stress¹ and it throws attention to, and facilitates the construction and support of, the social proposals involved in that form of anarchism. Critical philosophical anarchism is representative of a position which mostly characterises anarchism on the whole.

6.2.Political anarchism.

So critical philosophical anarchism constitutes a very comprehensive position, which represents an indispensable outlook to approaches to political institutions. But what about the other direction which the anarchist contribution can take? What about its implications for political anarchism itself? How does the critical stand with regard to the state which the philosophical anarchist position shares with political anarchism relate to the tasks of the advocates of the latter?

6.2.1.The tasks of political anarchists.

As explained in chapter five, in the light of the framework established with the help of philosophical anarchism and the normative horizon of the anarchist ideal of legitimacy, anarchists themselves have to undertake their own tasks. In order to address concerns of the defenders of the state and in order for their proposals for social organisation to be taken seriously, political

¹This is a crucial part of the political anarchist criticism of the state, which goes beyond the detection of the failures of justifications of it. See, e.g., Bakunin 1867. See also, Proudhon's famous exclamation: '[t]o be GOVERNED is to be at every operation, at every transaction, noted, registered, enrolled, taxed, stamped, measured, numbered, assessed, licensed, authorized, admonished, forbidden, reformed, corrected, punished. It is, under the pretext of public utility, and in the name of the general interest, to be placed under contribution, trained, ransomed, exploited, monopolized, [...] robbed; then, at the slightest resistance, the first word of complaint, to be repressed, fined, despised, harassed, [...] sacrificed, sold, betrayed; and, to crown all, mocked, ridiculed, outraged, dishonoured. That is government; that is its justice; that is its morality' (1851, p.294). For a contemporary example of this line of criticism, see Colin Ward's attack, which indicates that the state stands in a reverse relation with the rest of society, occupying and formalising at the expense of the latter any space unused by social participation: e.g., '[t]here is an inverse correlation between the two [namely, the libertarian and the authoritarian tradition]: the strength of one is the weakness of the other. If we want to strengthen society we must weaken the state. Totalitarians of all kinds realise this, which is why they invariably seek to destroy those institutions which they cannot dominate. *So do the dominant interest groups in the state* [...]' (1973, p.24, emphasis mine). For a very recent philosophical criticism of the state in terms of political anarchism, see Carter 1999.

anarchists have to show that their own social visions live up to the moral criteria of the ideal of legitimacy in a way that proves both their desirability and their feasibility and viability. This will also weaken the force of arguments to the effect that we need the state and will make the call of political anarchism to demolish it more understandable and intuitive.

As mentioned in the introduction, the anarchists focus on the social character of human life and on the ethos of voluntary co-operation, which is fairly represented by communal anarchism. So this anarchist position qualifies as a political position paradigmatic of what anarchism proposes as a social alternative. However, this form of anarchism has difficulties in providing an answer to the question of how to achieve and sustain stable, harmonious, social co-operation without coercion. This problem with political anarchism lies in the fact that, in its commitment to social co-operation, it is bound to recognise the necessity of forms of social order, social conventions and obligations, which are hardly defined without 'an element of coercion'.² Social criticism and pressure, especially in small communities, can have strikingly coercive effects on individuals, not to mention their inefficiency in large cities.³ Given that communal anarchists accept a degree of coercion in forms of social order necessary for the survival of anarchic communities, it follows that, for those anarchists, the issue of political obligation becomes problematic (since they either 'reintroduce' political obligation or appeal to proposals which are open to objections similar to those that anarchists themselves make against institutionalised coercion).⁴ What becomes crucial then, is to find a way to incorporate consistently with the political anarchist view the explicit arguments against political obligation provided by philosophical anarchists.

It is on this terrain, then, that communal anarchism, and any other positive proposal which is characterised by its advantages and disadvantages, needs to be tested under the auspices of an ideal of legitimacy.⁵ Anarchism

²Horton 1992, pp.120-123. See also my introduction, note 43.

³For similar points, see Miller 1984, pp.174-177.

⁴Horton 1992, pp.122-123.

⁵A demonstration of the compatibility of political anarchist social visions with the perspective and ideals of legitimacy shown in this thesis to be provided by philosophical anarchists, and their proximity to them, would achieve this and would establish a continuity within the anarchist ideology. It would provide a combination of a diagnostic of what goes wrong with coercion with an explicit positive horizon of harmonious social relations without the state.

must prove that the social visions it proposes can deal effectively with the problem of achieving co-operation, order and safety without coercion. This demonstration could best be effected through the elements already implemented within the anarchist tradition. That is, by a more complete development of the theoretical anarchist arguments concerning the prisoners' dilemma, public goods and morality and by empirical observation and cultivation of its manifestations within real societies. Further, although anarchist visions do not have to meet the conditions of political obligation, since they reject it,⁶ this demonstration must proceed in ways compatible with the moral criteria that the anarchist position sustains.

This thesis does not undertake the tasks of political anarchism. It is probably the work of social and political science to do so. But a brief discussion of elements which political anarchists might use in order to address their problems might provide illumination and be a first step in this direction.

There is a continued development of theoretical arguments in defence of anarchy, which are customarily advanced in the political debate and stand in interaction with the anarchist work on social structures. Anarchists advance solutions to the prisoners' dilemma⁷ and to the argument from public goods,⁸ in order to address the problems of co-ordination of activities, co-operation and social order without appeal to institutionalised coercion and formal law. Also, they argue for the possibility of relying on generally accepted moral reasons, in order to show that anarchism need not lead to widespread unrest, and thus to counteract criticisms which appeal to the impossibility of a unifying moral

⁶Except perhaps particularity as needed to characterise the relationship of an individual with others and to a cause within a co-operative effort, to determine the extent to which they all are and conceive each other as participants in a common enterprise whenever this opportunity arises.

⁷Solutions such as suggesting iterated forms of the prisoners' dilemma: depicting the game in a number of times so as to allow repeated interaction among the parties provides great possibility for the emergence of strategies which result in cooperation (see Axelrod 1984 and Taylor 1976; 1987). Another solution involves 'experimental arguments', which support these theoretical possibilities by providing examples of cooperative behavior and of support of voluntary associations evidenced in real life (see Harriott 1996, pp.131-134). Along these lines, the most important anarchist claim is that, by realising the highly abstract and unrealistic construction of the dilemma as far as its various features are concerned and by relaxing some of them, the possibility of cooperation on a voluntary basis becomes more and more obvious (see Sanders 1996, pp.264-265). A successful application of the anarchist structures and practices plays a primary role to this effect.

⁸For an explanation of the prisoners' dilemma and the argument from public goods, along with representative bibliography on these issues, see my discussion of social contract in chapter two. For public goods see also chapter four.

view.⁹ Furthermore, many of them aspire to a gradual¹⁰ and stable reconstruction of social life envisaged as a social scheme of co-operation, one end of the spectrum of views that has, at its opposite extreme, the institutionalised coercion of states.

Anarchists present us with a picture of uncoercive and equal social relations. These are reflected, in the anarchist work on social structures, in a social background constituted by a multiplicity of decentralised, voluntary associations, which are realised by a variety of groups, organised on human scale, are of all forms and degrees and involve many important practices and goals (social units such as local communes, different kinds of co-operatives and contemporary movements serving a variety of causes regarding various areas of life); and which are confederated with each other in order to apply, co-ordinate, improve and expand the relations among them and between them and the surrounding system.¹¹ These features, as actual implementations of the ideals of freedom, equality, co-operation and solidarity, should be tested by the provided moral standards, and by experience.

⁹This criticism is present in Wolff 1996a, pp.52-53, where it is claimed that the difficulty of making everybody to share a common set of moral principles generates infinite disagreement which makes anarchism unattractive. Also see Kavka 1996, where the writer offers a variety of reasons for proving that even perfect moral agents (angels) would need the state as the most effective solution to moral disputes. The anarchist practices for social order and a reflection of central anarchist values in them (values such as decentralisation, participatory democracy, egalitarianism, self-sufficiency, ecology) as well as of the ultimate ideals of freedom, equality and solidarity which underlie these values, constitute the most essential elements for replies to this criticism. Also, the position of critical philosophical anarchism is already shown to involve, and to redirect us towards, generally acceptable moral reasons.

¹⁰For replies to the criticism that 'instant anarchism' has adverse effects, see Sanders 1996, pp.271-274 and Ward 1973, pp.131-133. A central tenet of anarchism is that it is through the implementation of pre-figurative social structures and experience within them that individuals will cultivate the attitudes and abilities of trust and cooperation required for an alternative construction of social life and which life in states has made us lose (the anarchist idea of 'a prefigurative' model of revolution': see Cahill 1989, pp.235-236 and Carter 1999, pp.266-276). Such a structural preparation applies a characteristic anarchist belief, namely that the means towards social change should be the same as, or, compatible with, the ends forming this change (Cahill 1989, pp.235-236 and Joll 1964, chapter IV). Although these ideas propose immediate changes, they do not contradict the proposal for gradual social reconstruction. Rather, they reflect the anarchist position that the application of this reconstruction should be directly and consistently of the kind that the anarchist envisages and explain the forms which comprise it.

¹¹On the whole, these schemes and their federation constitute a culture of 'pre-figurative forms' or of 'cooperative autonomy' (Carter 1999, pp.266-276 and Bookchin 1980; 1997; 1998).

'Whole communities'¹² - such as the traditional communes constructed around the world, especially in the form of the 'secular family commune' they took in the 1960s¹³ and its more contemporary development in the 1980s¹⁴ - might acquire a very valuable character if developed in accordance with Bookchin's political program of 'Libertarian Municipalism'.¹⁵ Bookchin characterises Libertarian Municipalism as 'an explicit attempt to update the traditional social anarchist ideal of the Federation of Communes or "Commune of communes"', that is, the confederal linking of libertarian communist municipalities in the form of directly democratic popular assemblies as well as the collective control or "ownership" of socially important property'.¹⁶ He argues that for a promising alternative social framework there should be an immediate sphere of popular self-management where co-operation and commitment to community come to the fore. This is the *democratic municipality*. He sees the municipality as the 'authentic unit of political life [...] where as a whole, if it is humanly scaled, or in its various subdivisions, notably the neighborhood'.¹⁷ The neighborhood becomes the vital space for discussions of political, cultural and economic issues. His claim is that the immediate spheres for learning to be familiar with 'the political process' and units of an alternative culture should be: 'the villages, towns, neighborhoods, and cities in which people live on the most intimate level of political interdependence beyond private life'.¹⁸ Bookchin's vision is one of a society where people are actively involved in public matters through interaction within municipal assemblies whose members meet constantly for a direct discussion and decision-making on every matter of their lives; and which are further co-ordinated by delegates who represent them in 'local confederal councils' and 'who are rotatable, recallable, and above all, rigorously instructed in written form' about their position on the issues discussed in the councils.¹⁹ This process extends at every level, creating thus a confederal network which

¹²Taylor 1982, p.169.

¹³For an excellent survey of these social units, see Abrams and McCulloch 1976.

¹⁴For this, see Pepper 1991.

¹⁵For this, see Bookchin 1997; 1998.

¹⁶1998, p.1.

¹⁷1997, p.175.

¹⁸*Ibid.*

¹⁹*Ibid.* p.177.

interlinks municipal assemblies through local councils, all organised from the bottom up.²⁰

There are four recurrent themes running through Bookchin's vision which are extremely important for the organisation of social life in anarchist terms and in line with the anarchist commitment to equal, active participation and its new view of the political. The first is Bookchin's concern to revive citizenship through appeal to municipal politics, where he conceives politics in its Greek meaning, namely as the self-management of the community, or 'popular ways of managing the city', as evidenced in and inspired by the Greek '*polis*' and other cities of the past.²¹ With this idea Bookchin highlights an alternative to the 'political' as conceived so far, which may be constituted upon anarchist lines both as a replacement of the practices characteristic of the state and for cultivation of a new kind of collective action which may socialise us into, and help us arrive at, social change. The second interesting theme is Bookchin's distinction between policy-making and administration, according to which he considers the former as the practice of individuals qua citizens within the assemblies, as their main political function, while the latter as the job of those appointed and working in each specific area of society,²² which frees citizens from time-consuming preoccupation with administrative details. This distinction applies also at the federal level with regard to assemblies and councils: the former involve policy-making while the task of the latter is co-ordination and administration.²³ This idea helps anarchist organisations to preserve participation while achieving the required co-ordination of activities which would make them viable and effective as well as able to extend to the larger society. Another theme characteristic of Bookchin's project is 'the municipalization of the economy', according to which property should be in the custody of the community and economy arranged on the basis of the decisions of citizens in the municipal assemblies with regard to both production and distribution.²⁴ In

²⁰Ibid. pp.178-179.

²¹1998, p.5. As more recent examples of the form of institutions to which he aspires, Bookchin indicates the town meetings of the colonial New England (1989, p.268), the assemblies of revolutionary Paris and the community life during the Spanish revolution (1987, pp.189-192).

²²1997, pp.177-178.

²³Ibid. pp.178-179.

²⁴Ibid. 184-186.

this way individuals control the economy as citizens within the assemblies and in their decisions they are guided by the needs of the community while as workers they concentrate on specific tasks without concern for management of the particular economic units in which they work (for example, the factory).²⁵ Bookchin thinks that this idea is essentially liberatory for the workers and that it provides an improved conception of the notion of 'worker control' (which within anarchosyndicalism has been connected to the direct management as well as ownership of the economic units by workers): he thinks that it helps workers 'escape the tyranny of the factory, rationalized labour, and planned production', thus giving them free time and freedom from an abuse of labour; and that, at the same time, it avoids the privatisation of economy and the competitiveness it entails, which he sees to be involved in the anarchosyndicalist idea of 'collectivized enterprises'.²⁶ This idea can apply to any profession within contemporary societies, as a new way of organising work environment. A final theme in Bookchin's politics is the interaction between and independence of communities through confederation, as a way of avoiding inefficiency, isolation and a narrow parochial outlook. And, as a way of arriving at his 'ultimate agenda', that is, his vision of a world in which the state is replaced by 'a confederal network of municipal assemblies' and which involves the future task that we 'radicalize the democracy we create [namely the democratic municipalities within which we are to preserve and expand freedoms], imparting an even more creative content to the democratic institutions we have rescued and tried to develop'.²⁷ With confederation Bookchin aspires to carry the ideas of decentralisation and small scale to their ultimate expansion.

All these central ideas can apply also to the form of 'partial community', namely 'a wide variety of cooperatives, collectives, neighborhood associations and other practices and projects of direct action, mutual aid and self-management'.²⁸ And the specific practices²⁹ included within these social

²⁵Ibid.

²⁶Ibid. pp.185-186.

²⁷Ibid. pp.194-195.

²⁸Taylor 1982, p.169. For forms of 'partial community', see Ward 1973; Cahill 1989; Carter 1999, pp.274-275. 'Direct action' originally applied as a political tactic adopted by anarchists and other radicals for creating an immediate effect on situations and on the range of choices

structures of the counterculture are of central importance for testing its acceptability and viability.

But these aspects of the anarchist project, although promising, are still incomplete³⁰ and to this extent the difficulty with coercion which anarchism faces remains. This difficulty can be expressed in a more challenging form in light of the framework shown in this thesis to be established by the anarchist position. Anarchism wants a society where there is imposition of no imposition, where the imposition of some on others is prevented. But here the concern arises with how there can be an imposition of no imposition such that the former differs from the latter. If anarchists promise us a land of no constraints, how are they to sustain this land with no use of constraints? The

of the individuals affected, e.g. involving actions such as sabotage and strikes. Today it is conceived and used in a more sophisticated and inclusive way, as a social practice through which individuals directly intervene in, participate in and manage social affairs. It covers a wide range of activities: it encompasses non-violent resistance to authority through various campaigns, movements and affinity groups as well as the organisation of, and work within, cooperatives and other pre-figurative forms (for an account of forms of direct action, see Carter 1999, pp.229-130, 233, 241, 268-260, 281, 316). For an extensive development of the idea of 'mutual aid' and an exemplary vision of society as a unit organised on the basis of it, see Kropotkin 1902.

²⁹For anarchist practices for social control and equality, such as reciprocity, democratic participation, distributive justice, public pressure, socialisation and ecology, see Taylor 1982; Pepper 1991; Ward 1973; Bookchin 1989; Carter 1999. For a virtue-based conception of 'practices', see MacIntyre 1985, chapters 14-17. Although MacIntyre is not an anarchist, his theory might help for an improved understanding and application of the 'internal' values, rationale and workings of social practices adopted by anarchists.

³⁰Four serious problems which anarchist structures face and which their development aims at solving if they are to qualify as core units of social change are those discussed by Pepper with regard to whole communities (for the following analysis, see Pepper 1991, pp.59-62 and 200-203). Firstly, these structures suffer a gap between principle and practice. This means that their members fail to live up to the principles they profess to adopt. This in traditional communes is mainly due to the communards having compromised original ends to a pragmatist concern with efficiency. Secondly, there is lack of ideological clarity, namely of a clear and shared vision of principled perspective and purposes. This is because there is nowadays less talk about principles and more about direct practical issues concerning day-to-day survival and comfort, which helps avoid conflicts among the participants but also facilitates the gap between principle and practice. Thirdly, communards lack contact with a wider audience through effective outreach. That is, they fail with their ideas and practices to reach the larger population through keeping connections with other social movements and with the rest of society. This is both due to lack of ideological clarity and person power within the communes and due to concentration on personal relations at the expense of organised collective action and outside political activity. Fourthly and finally, communes suffer a tension between 'the private' and 'the public'. Their members see the personal to be less a part of more general and common concerns which help cultivate solidarity and a union between individual freedom and communal reciprocity. My focus on Bookchin's proposal aims at solutions to these problems. Also federation and an initial adoption of a clear view of how to oppose the system while at the same time using it in a way that addresses the social reality within which both itself and the counterculture work, play a central role to this effect. But these are still proposals which need actual and patient implementation and expansion.

anarchist proposals for social organisation do not yet qualify to solve this problem. Also even if people desire a non-coercive world, they will still disagree with anarchists and among each other about how to sustain a non-coercive order. The anarchist plan of socialising people to structures which do not involve institutionalised coercion is not accepted by all and this itself creates a ground for further conflicts and the need for their resolution, which in turn reintroduces an appeal to constraints. Ultimately, anarchists have to think of institutions such that prevent the emergence of constraints in a way that makes this prevention both sustainable and characteristically anarchic. Sustaining constraints is not anarchism. Sustainability without constraints has not yet been proved successful. This is a serious dilemma for anarchism, a very challenging conception of the central philosophical and political problem which it faces. In view of this difficulty, the anarchist claims that we should abolish the state and can live without it remain weak.

Yet, the perspective of critical philosophical anarchism argued for in this thesis has a very valuable thing to offer in the direction of political anarchism. It provides the latter with a general proposal for how to look at social life and set to organise it which both constitutes a fresh outlook and may guide the specific proposals of political anarchism to more fruitful directions in view of the specific problems that their defences face and, more importantly, of the main dilemma which haunts anarchism. Critical philosophical anarchism has been shown to represent a view which does not start from a duty to justify constraints but rather expresses *an aversion to illegitimate constraints and defines a duty not to harm others*. This, I argued, is the core feature of the anarchist perspective forced on defences of political institutions and now it is the key to understanding the tasks of political anarchism. In light of this challenge, when the anarchist is asked to provide an account of constraints to no constraints he can begin to build his reply on this basis: *we need some constraints, but only those which prevent the emergence of illegitimate constraints. Such are those that it would be unreasonable for us to reject*.

This position gives every value to the anarchist's initial concern with the question of whether we should have institutions at all. If no constraint can be reasonable then the anarchist is justifiably pretty unconvinced, if there can be reasonable constraints then we need to prove in each case that it is only those

that apply. The distinctive focus on the *quality* of constraints, involved in the perspective proposed by philosophical anarchism, is central in this idea. The anarchist attack on the state becomes grounded and acquires new force. Also this position throws light to the acceptable moral criteria which the anarchist test on legitimacy imposes: these values may be seen as the reasonable constraints that anarchism itself can adopt consistently and the basis of any constraint that is deemed reasonable. Finally, and importantly, it is a view which when applied to anarchism's own proposals neither repeats the traditional method of designing utopias and then struggling to prove them to be possible nor is a defence of 'minimal state'.³¹ Rather, the defences of alternative social structures such as those discussed above are first to be guided by the newly established and more realistic demand that we prevent the imposition of illegitimate constraints and anarchists are to apply the relevant practices as parts of an effort to redeem this demand. Thus the classical anarchist propositions remain promising and proper ways of completing the anarchist project. But to secure that anarchists take a sustainable course in dialling with the problems that these propositions involve and in providing them as social solutions, and that they work consistently in this direction and compatibly with their attack on the existing social reality, they need *always* to be guided by the proposal offered by critical philosophical anarchism. Like this, their propositions are newly motivated. And, on the whole - in a way

³¹For such a defence, see Nozick 1974. In this respect there is a rather salient yet significant connection between anarchism and socialism. As Carter argues, economic equality is an aspect regarding which anarchism, as a theory of 'no state', is closer to 'more state' than to 'less state' (1999, pp.258-260): to the extent that equality is highly valued in anarchy (something that my thesis supports), versions of less state such as the 'minimal state' are opposed; this is because the minimal state, in being confined to 'providing security, enforcing contracts and preserving property', fails to provide welfare with its egalitarian implications (ibid. p.259, n.10); and '[i]n failing to provide welfare, it would most likely require a massive coercive apparatus to protect the inequalities that would inevitably arise', something which makes it 'more coercive' and thus 'all the more objectionable to anarchists' in general (ibid.). Hence, although anarchism is distinguished by its critique of the state and although it involves an attack on the institutionalisation of welfare (for this, see, e.g., Ward 1973, chapter XII), functions of the state which are not rooted in the ultimate causes of it as a paradigm of institutionalised coercion (these causes being the real object of the anarchist attack), are not necessarily rejected. Among such functions is egalitarian distribution, the institutionalisation of which may be preferred by anarchists if less state or monarchy are the only alternatives. Thus the characterisation of theorists such as Nozick as anarchists is refuted, a refutation about which I am in agreement with Carter (1999, p.259). But most importantly, the present explanation of the anarchist opposition to minimal state highlights more specific aspects which make the perspective of critical philosophical anarchism incompatible with such a structure.

that philosophical and political anarchism are united - the anarchist project continues to be the characteristic anarchist position against the state and its demanding approach to justification retains the radicalism appropriate to the anarchist outlook while, at the same time, it maintains a perspective which is shown to be needed to be shared by all sides and which is first and foremost applied to its own terrain.

In these terms, my suggestion is that if it can combine its positive view of society with a description of how co-operation without coercion can obtain, all within the boundaries of the ideal of legitimacy, anarchism looks like the most appealing position. But for this to be achieved, there is work to be done. The theoretical discussion conducted in this study is only a first motivating step in this direction.

6.2.2. Anarchist approaches to concrete dilemmas.

As long as the perspective of critical philosophical anarchism is offered in a world where there is a state, what is such an anarchist committed to in such a world? This is the final important question to put to the anarchist. How does the anarchist ideal of legitimacy help address *concrete dilemmas*? How does the anarchist help us meet the claims that others make on us? More precisely, what is the anarchist position on police, on health-care and education and on helping strangers in need? If we don't want the minimal state and if the anarchist ideal supports our demands on the state in terms of shared ethical concerns on the basis of which we judge its quality, how is this translated into an answer with regard to the issues just mentioned?

I believe we can answer these questions in the lines of the solution outlined and proposed in the above paragraphs in defence of political anarchism. The anarchist subversive campaign represented in the criticism of political obligation encourages a critical attitude towards political institutions. This means that we attend to the fact that the state is not itself a source of ethical concerns and so any function of it which it claims to be for our own good needs to be tested whether it is so, to be traced by reference to concrete harms to individuals. So, for example, when the state claims that it needs support of the army and the police in order to protect us, we should see

whether on the basis of acceptable moral reasons these functions of it are appropriate. Since we have no political obligation, we need to test both if these services are acceptable on their own and if there are other, acceptable alternatives to them. This means that as long as we live within the state apparatus and is very difficult to suddenly replace its institutions, we need to see which ones of them do a proper job.

The police is a typical and immediate way of providing civil protection. So we cannot suddenly make this institution disappear. But we can demand that they exercise their duties in a legitimate way, namely that they interfere without excessive use of power, without insults, use of physical force or weapons, and only where and when it is necessary. The right to restrict or punish on the basis of ethical duties that we owe to each other belongs to all of us but we need to agree on acceptable and common ways of discharging these duties, and an administration that already exists might be an efficient means for that. Again, it is not that we should be against even strong aspects of the state, but they have to be traced back solely by being justified in terms of the ideal of legitimacy and the way in which it traces harms back to particular persons. At the same time, given that we know that the police is not an institution based on distinctive moral demands but just can function in compatibility with independent such demands which we need to make sure it respects, we can work towards establishing alternative ways of providing protection, which gradually might replace the police. Political anarchists talk about civil militia. This and other forms of group-based, non-hierarchical administration might not be accepted by all citizens and my claim is not that the anarchist should impose such a task on us. Yet, given the view on coercion which anarchism reminds us that the lack of political obligation justifies, such attempts are motivated and thus appear now as totally acceptable available alternatives which we can learn to apply within the state.

The same applies to health-care and education. The state can be seen to justifiably provide for these on the basis of legitimate ethical concerns. That is, it is a good way of helping discharge our relevant obligations towards one another in a fair manner. So the anarchist perspective does not lead immediately to a demand for withdrawal of these functions of the state but rather makes it more critical for us to test their specific rationale and

justification. To check and criticise specific laws and practices on education and health, to demand replacement of illegitimate and inefficient ones, which create harm, and to resist efficiency if it is exploited as a name for arrangements which represent interests other than the ones meant to be served in these areas (for example, we should consider what the real motivations are for gradual replacement of state-functions by private companies in co-operation with the state - privatisation of public institutions). At the same time, the anarchist perspective motivates, for those who want to try them, attempts towards replacement of the state-institutions in these areas by non-centralised organisations. The visions of partial community that anarchists suggest - in the form of groups functioning at the level of neighbourhood, deciding within assemblies, co-ordinating by confederation and administering by rotation, for various purposes (from organising alternative educational schemes to campaigning for the rights of children and old people and against the institutionalisation of mentally ill individuals) - are available alternatives which can gradually develop and expand with considerable force.

Finally, states have external relations to and duties towards other states and the world as a whole. They need to protect themselves from foreign attacks, support distant peoples who are treated unjustly and in general to co-operate with other states for just purposes. What is the position of the anarchist in relation to these issues? The lack of legitimacy shows that we have no obligation to help the state preserve itself or see its provisions for helping other people as the only ones that are applicable and justifiable. This does not mean removing the army suddenly but it does mean that the anarchist perspective makes its support completely optional and supports its eventual removal. The army is a very characteristic means through which the state-agents serve their own interests and through which relations of power are cultivated and expanded. Anarchists are in complete opposition to this phenomenon. Their attack on the legitimacy of coercion is primarily motivated by this situation. We have no reason to help the state serve purposes of its preservation and domination (no reason to support coercion and hierarchy in themselves). Yet we have reason to accept international institutions for co-operation among the states, since the latter exist and to the extent that such organisations provide ways of reciprocal checking on the part of the states in

international affairs, and to evaluate them in the same way we evaluate the states, now at the international level. Also, and more importantly, we want to help other people in need. In this case the anarchist perspective grounds a view encouraging participation in international organisations for peace and contribution to the needy (especially the independent ones) and the constant creation, co-operation and expansion of affinity groups all over the world for these purposes (so as for us to discharge our duties to such others as individuals and as citizens of the world). An anarchist will not join the army, will not go to war and will not contribute to the preservation of such means of supporting policies, practices and aims. This is an area where the critical outlook towards the state finds a very direct expression.

Thus, the basis for answering these questions *is* the critical outlook supported by philosophical anarchists such as Simmons. But it needs to be stressed that this does not extend only to demands for privacy and independence against the state when it interferes with harmless private behaviour and demands high taxes. It applies to every area and it is accompanied with responsibilities and demands for work on our part. As long as taxes are for the purpose of helping the poor and funding health and education, they are a legitimate sacrifice to be made by us until we find alternative ways of helping people. We cannot, as anarchists, insist that we are free to escape that within the state which frustrates our individual pleasures but also to enjoy in it what we find nice. We must take the good with the bad. We must have freedom as well as responsibility. As I have been arguing in this thesis, these are two sides of the same coin. Again, the critical approach on the basis of shared ethical concerns which the ideal of legitimacy represents is applied: in the light of the knowledge that the state is no exclusive source of ethical concerns, at every instance we have the responsibility to consider carefully whether and why what the state requires, or does, is acceptable, or whether it creates harm. This is the way of tracing harms back to individuals and distinguishing reasonable from illegitimate constraints. Those accepted are those which have been tested and deemed appropriate. Thus in the hands of critical philosophical anarchism the challenge to political obligation has more pressing implications than the advocates of this

anarchist position have thought. In this case, it becomes a positive and widely applied position about our attitudes and moral duties.

Conclusively, in either direction of its contribution the anarchist position sets a fundamental demand. And by setting it, everything changes. Even if we cannot abandon institutions and cannot escape constant determination by them, we are still inspired by, and accommodated to, a different perspective. We get to newly assert an old and unjustifiably forgotten position: that we ask every time institutions to become better and that we participate in this. Even when the state is good, it has a morally problematic existence and we should not put too much trust in it but rather be critical towards it. Our arguments are fragile and present a temporary victory. No one wins. We need to help each other. We have to apply this position. In the end, everybody has to actually and persistently ask the anarchist question. When we complain that we are harmed, we should remember that first it is us who have responsibility for the elimination of this evil. We have to do this because it is the best affirmation of our freedom which we are truly able to uphold. We owe this to our selves to the extent that we want to be free.

BIBLIOGRAPHY.

Abrams, P. and McCulloch, A. (1976), *Communes, Sociology and Society*, Cambridge: Cambridge University Press.

Anscombe, G. E. M. (1978), 'On the Source of the Authority of the State', in *Authority*, Raz, J, ed., Oxford: Basil Blackwell, 1990, pp.142-173.

Arneson, R. (1982), 'The Principle of Fairness and Free-Rider Problems', in *Ethics* 92.

Axelrod, R. (1984), *The Emergence of Cooperation*, New York: Basic Books.

Bakunin, M. (1867), 'Power corrupts the best', in *Marxism, Freedom, and the State*, Kenafik, K. J, ed., London: Freedom Press.

Barker, R. (1990), *Political Legitimacy and the State*, Oxford: Clarendon Press.

Bookchin, M. (1980), *Toward an Ecological Society*, Montreal: Black Rose Books.

—— (1987), *From Urbanization to Cities*, London: Cassell, (new edition of 1995).

—— (1989), 'New Social Movements: the anarchic dimension', in *For Anarchism: History, Theory, and Practice*, Goodway, D, ed., London and New York: Routledge Press, pp.259-274.

—— (1997), 'Libertarian Municipalism', in *The Murray Bookchin Reader*, Biehl, J, ed., London and Washington: Cassell, pp.172-196.

—— (1998), 'A Politics for the 21st Century', presented in *The Lisbon Conference on Libertarian Municipalism*.

Cahill, T. (1989), 'Co-operatives and anarchism: a contemporary perspective', in *For Anarchism: History, Theory, and Practice*, Goodway, D, ed., London and New York: Routledge Press, pp.235-258.

Carter, A. (1989), 'Outline of an Anarchist Theory of History', in *For Anarchism. History, Theory, and Practice*, Goodway, D, ed., London and New York: Routledge Press, pp.176-197.

—— (1993), 'Towards a Green Political Theory', in *The Politics of Nature*, Dobson, A. and Lucardie, P, eds., London and New York: Routledge Press, pp.39-62.

- (1995), 'The Nation-State and Underdevelopment', in *Third World Quarterly*, Vol.16, No 4, pp. 595-618.
- (1999), *A Radical Green Political Theory*, London: Routledge Press.
- Cohen, J. (1996), 'Reason, Humanity and the Moral Law', in *The Sources of Normativity*, Korsgaard, C. M, (O'Neill, O, ed.), Cambridge: Cambridge University Press, pp.167-188.
- Daniels, N. (1979), 'Wide Reflective Equilibrium and Theory Acceptance in Ethics', in *Journal of Philosophy*, 76.
- Dworkin, R. (1975), 'The Original Position', in *Reading Rawls: Critical Studies on Rawls*, Daniels, N, ed., Oxford: Basil Blackwell, 1975.
- Flood, M. (1958), 'Some Experimental Games', in *Management Science* 5, pp.5-26.
- Friedman, R. B. (1973), 'On the Concept of Authority in Political Philosophy', in *Authority*, Raz, J, ed., Oxford: Basil Blackwell, 1990, pp.56-91.
- Gans, C. (1992), *Philosophical Anarchism and Political Disobedience*, Cambridge: Cambridge University Press.
- Gauthier, D. (1986), *Morals by Agreement*, Oxford: Clarendon Press.
- Graham, R. (1989), 'The role of contract in anarchist ideology', in *For Anarchism: History, Theory, and Practice*, Goodway, D, ed., London and New York: Routledge Press, pp.150-175.
- Green, L. (1988), *The Authority of the State*, Oxford: Clarendon Press.
- (1996), 'Who Believes in Political Obligation?', in *For and Against the State: New Philosophical Readings*, Narveson, J, Sanders, J. T, eds., Maryland: Rowman and Littlefield, pp.1-18.
- Habermas, J. (1994), 'Human Rights and Popular Sovereignty: The Liberal and Republican Versions', in *Ratio Juris*, Vol. 7, No. 1 (March), pp.1-13.
- Hampton, J. (1986), *Hobbes and the Social Contract Tradition*, Cambridge: Cambridge University Press.
- (1997), *Political Philosophy*, Westview Press, Boulder.
- Harriott, H. H. (1996), 'Games, Anarchy, and the Nonnecessity of the State', in *For and Against the State: New Philosophical Readings*, Narveson, J, Sanders, J. T, eds., Maryland: Rowman and Littlefield, pp.119-136.
- Hart, H. L. A. (1955), 'Are There Any Natural Rights?', in *Philosophical Review* 64 (April).

- Hill, T. E. (1991), *Autonomy and Self-respect*, Cambridge: Cambridge University Press.
- Hobbes, T. (1651), *Leviathan*, MacPherson, C. B, ed., Harmondsworth: Penguin Press, 1968.
- Horton, J. (1992), *Political Obligation*, Basingstoke, England: Macmillan.
- Hume, D. (1739-40), *A Treatise of Human Nature*, Selby-Bigge, L. A, ed., Oxford: Oxford University Press, 2nd edn., 1978.
- (1748), 'Of the Original Contract', in *Hume: Political Essays*, Haakonssen, K, ed., Cambridge: Cambridge University Press, 1994.
- De Jasay, A. (1996), 'Self-Contradictory Contractarianism', in *For and Against the State: New Philosophical Readings*, Narveson, J, Sanders, J. T, eds., Maryland: Rowman and Littlefield, pp.137-169.
- Joll, J. (1964), *The Anarchists*, London: Methuen and CO, Ltd.
- Kant, I. (1793), 'On the Common Saying 'This May Be True in Theory, But It Does Not Apply in Practice'', in *Kant: Political Writings*, Reiss, H, ed., Nisbet, H. B, trans., Cambridge: Cambridge University Press, 1970, 1991.
- Kavka, G. S. (1983), 'Hobbes's War of All against All', in *Ethics* 93 (January), pp.291-310.
- (1996), 'Why Even Morally Perfect People Would Need Government', in *For and Against the State: New Philosophical Readings*, Narveson, J, Sanders, J. T, eds., Maryland: Rowman and Littlefield, pp.41-61.
- Klosko, G. (1987), 'Presumptive Benefit, Fairness and Political Obligation', in *Philosophy and Public Affairs*, Vol. 16.
- (1992), *The Principle of Fairness and Political Obligation*, Lanham, MD: Rowman and Littlefield.
- (1994), 'Political Obligation and the Natural Duties of Justice', *Philosophy and Public Affairs*, (Summer).
- and Klein, D. (2001), 'Political Obligations: The Empirical Dimension', University of Virginia, presented in: 2001 Annual Meeting of the American Political Science Association, San Francisco.
- Korsgaard, C. M. (1995), *The Sources of Normativity*, O'Neil, O, ed., Cambridge: Cambridge University Press.
- Kropotkin, P. (1877-1920), *Kropotkin's Revolutionary Pamphlets*, Baldwin, R. N, ed., New York: Dover, 1970.

- (1892), *The Conquest of Bread and Other Writings*, Marshall, S, ed., Cambridge: Cambridge University Press, 1995 (reprint of 1913 revised edition).
- (1899), *Fields, Factories and Workshops Tomorrow*, London: George Allen and Unwin, 1974.
- (1902), *Mutual Aid: A factor of Evolution*, Boston: Extending Horizons Books, 1955.
- Ladenson, R. (1980), 'In Defense of a Hobbesian Conception of Law', in *Authority*, Raz, J, ed., Oxford: Basil Blackwell, 1990, pp.32-55.
- Lewis, T. J. (1989), 'On Using the Concept of Hypothetical Consent', in *Canadian Journal of Political Science*, Vol. 22.
- Lloyd Thomas, D. A. (1995), *Locke: On Government*, London and New York: Routledge Press.
- Locke, J. (1690), *Two Treatises of Government*, Laslett, P, ed., Cambridge: Cambridge University Press, 1988.
- Lyons, D. (1981), 'Need, Necessity, and Political Obligation', in *Virginia Law Review* (February).
- MacIntyre, A. (1985), *After Virtue*, London: Duckworth (2nd edn, reprinted in 1999).
- Marshall, P. (1989), 'Human Nature and Anarchism', in *For Anarchism: History, Theory, and Practice*, Goodway, D, ed., London and New York: Routledge Press, pp.127-149.
- Marx, K. (1843), 'On the Jewish Question', in *Karl Marx: Selected Writings*, McLellan, D, ed., Oxford: Oxford University Press, 1977, pp.39-62.
- (1844), 'Economic and Political Manuscripts', in *Karl Marx: Selected Writings*, McLellan, D, ed., Oxford: Oxford University Press, 1977, pp.75-112.
- McPherson, T. (1967), *Political Obligation*, London: Routledge and Kegan Paul.
- Meckled-Garcia, S. D. (1998), *Membership Obligation and Legitimacy: An Expressivist Account*, PhD Thesis, Department of Philosophy, University College London (UCL).
- Miller, D. (1984), *Anarchism*, London: Dent.
- Munoz-Darde, V. (2001), 'Decision under Plurality: Rousseau's General Will', presented in: 2001-2002 Centre for Politics Law and Society Seminars, School of Public Policy, University College London, December.

- Nozick, R. (1974), *Anarchy, State and Utopia*, Oxford: Basil Blackwell.
- Olson, M. (1965), *The Logic of Collective Action: Public Goods and the Theory of Groups*, Cambridge, Mass.: Harvard University Press.
- Pateman, C. (1985), *The Problem of Political Obligation: A Critique of Liberal Theory*, 2nd edn, Oxford: Polity Press.
- Pepper, D. (1991), *Communes and the Green Vision: Counterculture, Lifestyle and the New Age*, London: Green Print.
- Pitkin, H. (1972), 'Obligation and Consent', in *Philosophy, Politics and Society*, 4th series, Laslett, P, Runciman, W. G, Skinner, Q, eds., Oxford: Basil Blackwell.
- Plamenatz, J. P. (1968), *Consent, Freedom and Political Obligation*, 2nd edn, Oxford: Oxford University Press.
- Proudhon, P. J. (1851), *General Idea of the Revolution in the Nineteenth Century*, Robinson, J. B, trans., London: Freedom Press, 1923.
- Raphael, D. D. (1976), *Problems of Political Philosophy*, London: Macmillan.
- Rawls, J. (1958), 'Justice as Fairness', in *John Rawls: Collected Papers*, Freedman, S, ed., Harvard University Press: Cambridge, Massachusetts, London, 1999, pp.47-72.
- (1964), 'Legal Obligation and the Duty of Fair Play', in *Law and Philosophy*, Hook, S, ed., New York: New York University Press.
- (1971), *A Theory of Justice*, Oxford: Oxford University Press, 1973.
- (1980), 'Kantian Constructivism in Moral Theory', in *John Rawls: Collected Papers*, Freedman, S, ed., Harvard University Press: Cambridge, Massachusetts, London, 1999, pp.303-358.
- (1985), 'Justice as Fairness: Political not Metaphysical', in *John Rawls: Collected Papers*, Freedman, S, ed., Harvard University Press: Cambridge, Massachusetts, London, 1999, pp.388-414.
- (1993), *Political Liberalism*, New York: Columbia University Press.
- (2001), *Justice as Fairness: A Restatement*, Kelly, E, ed., The Belknap Press of Harvard University Press: Cambridge, Massachusetts, London.
- Raz, J. (1979a), *The Morality of Freedom*, New York: Oxford University Press.
- (1979b), *The Authority of Law*, Oxford: Oxford University Press.
- (1985), 'Authority and Justification', in *Authority*, Raz, J, ed., Oxford: Basil Blackwell, 1990, pp.115-141.

- (1990), 'Introduction', in *Authority*, Raz, J, ed., Oxford: Basil Blackwell, pp.1-19.
- Ripstein, A. (1992), 'The General Will', in *The Social Contract Theorists: Critical Essays on Hobbes, Locke and Rousseau*, Morris, C, ed., Maryland: Rowman and Littlefield, 1999, pp.219-237.
- Rousseau, J. J. (1762), 'On Social Contract or Principles of Political Right', in *The Social Contract and Discourses*, Cole, G. D. H, Brumfitt, J. H, Hall, J. C, eds., London: Everyman, 1973.
- Ryan, C. (1996), 'The State and War Making', in *For and Against the State: New Philosophical Readings*, Narveson, J, Sanders, J. T, eds., Maryland: Rowman and Littlefield, pp.217-234.
- Sanders, J. T. (1996), 'The State of Statelessness', in *For and Against the State: New Philosophical Readings*, Narveson, J, Sanders, J. T, eds., Maryland: Rowman and Littlefield, pp. 255-288.
- Scanlon, T. M. (1982), 'Contractualism and Utilitarianism', in *Utilitarianism and Beyond*, Sen, A, Williams, B, eds., Cambridge: Cambridge University Press.
- (1998), *What We Owe to Each Other*, Cambridge, Massachusetts and London: The Belknap Press of Harvard University Press.
- Schmidtz, D. (1996), 'Justifying the State', in *For and Against the State: New Philosophical Readings*, Narveson, J, Sanders, J. T, eds., Maryland: Rowman and Littlefield, pp.81-97.
- Senor, T. D. (1987), 'What If There Are No Political Obligations? A Reply to A. J. Simmons', in *Philosophy and Public Affairs* 16.
- Simmons, A. J. (1979), *Moral Principles and Political Obligations*, Princeton: Princeton University Press (reprinted in 1981).
- (1987), 'The Anarchist Position: A Reply to Klosko and Senor', in *Philosophy and Public Affairs*.
- (1993), *On the Edge of Anarchy*, Princeton: Princeton University Press.
- (1996), 'Philosophical Anarchism', in *For and Against the State: New Philosophical Readings*, Narveson, J, Sanders, J. T, eds., Maryland: Rowman and Littlefield, pp.19-39.
- (1999), 'Justification and Legitimacy', in *Ethics* 109 (July), pp.739-771.

- (1999a), 'Locke's State of Nature', in *The Social Contract Theorists: Critical Essays on Hobbes, Locke and Rousseau*, Morris, C. W, ed., Lanham, Boulder, New York and Oxford: Rowman and Littlefield, pp.97-120.
- (1999b), 'Political Consent', in *The Social Contract Theorists: Critical Essays on Hobbes, Locke and Rousseau*, Morris, C. W, ed., Lanham, Boulder, New York and Oxford: Rowman and Littlefield, pp.121-141.
- (2001), *Justification and Legitimacy: Essays on Rights and Obligations*, Cambridge: Cambridge University Press.
- Skinner, Q. (1978), *The Foundations of Modern Political Thought*, 2 vols, Cambridge: Cambridge University Press.
- Smith, M. B. E. (1973), 'Is There a Prima Facie Obligation to Obey the Law?', in *Yale Law Journal* 82.
- Taylor, M. (1976), *Anarchy and Cooperation*, London: John Wiley and Son.
- (1982), *Community, Anarchy, and Liberty*, Cambridge: Cambridge University Press.
- (1987), *The Possibility of Cooperation*, Cambridge: Cambridge University Press.
- Waldron, J. (1993), 'Special Ties and Natural Duties', in *Philosophy and Public Affairs* 22, n.1, pp.3-30.
- (1993a), *Liberal Rights: Collected Papers, 1981-1991*, Cambridge and New York: Cambridge University Press.
- Ward, C. (1973), *Anarchy in Action*, London: Freedom Press (edition of 1982, reprinted in 1996).
- Weber, M. (1947), *The Theory of Social and Economic Organization*, London: William Hodge.
- Wellman, C. H. (1996), 'Liberalism, Samaritanism and Political Legitimacy', in *Philosophy and Public Affairs* 25, pp.211-237.
- Williams, B. A. O, Smart, J. J. C. (1973), *Utilitarianism: For and Against*, Cambridge: Cambridge University Press.
- Wolff, J. (1990-1), 'What is the Problem of Political Obligation?', in *Proceedings of the Aristotelian Society Supplementary Vol. LXXXI*.
- (1993), 'Review of Chaim Gans, *Philosophical Anarchism and Political Disobedience*, and George Klosko, *Political Obligation and the Theory of Fairness*', in *Mind*, pp.500-504.

- (1995a), 'Political Obligation, Fairness and Independence', in *Ratio* (New Series) 8, pp. 87-99.
- (1995b), 'Pluralistic Models of Political Obligation', in *Philosophica* 56, Koen Raes (ed.), pp.7-27.
- (1996a), *Political Philosophy: An Introduction*, Oxford: Oxford University Press.
- (1996b), 'Anarchism and Skepticism', in *For and Against the State*, Narveson, J, Sanders, J. T, eds., Maryland: Rowman and Littlefield, pp.99-118.
- Wolff, R. P. (1970), *In Defense of Anarchism*, London and New York: Harper and Row.
- Zimmerman, D. (1983), 'The Force of Hypothetical Commitment', in *Ethics*, Vol. 93.